

Environmental Management Act Orders Handbook



March 31, 2017

Written by the ENV Compliance Policy and Planning Section (Strategic Policy Branch)
in collaboration with the EMA Compliance Team (Regional Operations Branch)

B.C. Ministry of Environment

Environmental Management Act

Orders Handbook

INTRODUCTION	2
PURPOSE OF THIS DOCUMENT	3
CHAPTER 1: OVERVIEW OF ORDERS	4
1.1 What is an Order?	4
1.2 Types of Orders	5
1.3 Use of Orders	6
1.4 Who Can Issue Orders	8
1.5 Public Reporting of Orders	9
1.6 Aspects of Law	10
Chapter 2: GUIDANCE FOR USING AN ORDER	14
2.1 Select the Type of Order	15
2.1.1 Information Order (s77)	16
2.1.2 Pollution Prevention Order (s 81)	17
2.1.3 Pollution Abatement Order (s 83)	18
2.2 Write the Order	19
2.2.1 General Rules	19
2.2.2 Setting Enforceable Requirements	20
2.2.3 Components of an Order	21
2.2.4 Naming the Appropriate Person(s) in an Order	24
2.2.5 Tips, Templates and Examples	31
2.3 Issue and Serve the Order	62
2.4 Verify Compliance with the Order	68
2.5 Enforce Compliance with the Order	69
2.6 Manage Records	71
Chapter 3: GUIDANCE FOR AMENDING AN ORDER	75
Chapter 4: GUIDANCE FOR CANCELLING AN ORDER	77
APPENDICES	78
Appendix 1 – Acronyms and Definitions	78
Appendix 2 – Pick-List of Requirements	80
Appendix 3 – EMA Powers (For Ordering A Person To Do An Action)	81

INTRODUCTION

The *Environmental Management Act* (EMA) regulates how waste and other substances of concern are handled and disposed of in B.C.. Accordingly, EMA provides government officials with a variety of order-making authorities to intervene in activities where waste, or another substance, poses a risk to the environment, human health and public safety, or where a contravention of EMA has occurred.

How Often Are EMA Orders Issued?

In 2015, 1% of the inspections resulted in the issuance of an order. In other words 8 of the 632 inspections resulted in an order being issued.

Why Use EMA Orders?

- They are powerful administrative tools. For example, some types of EMA orders can require a person to undertake certain works, make repairs, or remediate environmental damage at his/her own expense.
- They are efficient. The process used to issue EMA orders allows government officials to intervene quickly when needed. For example, some types of EMA orders can be written and issued on the same day.
- They are fair. Principles of administrative fairness guide the process used to issue EMA orders.
- They are enforceable. EMA orders require specific actions to be taken by specific a date. This makes it clear whether or not compliance with the order was achieved. If compliance was not achieved, EMA provides for an administrative monetary penalty to be applied or the filing of formal charges, if appropriate.

What is the Penalty for Failing to Comply with an Order?

An administrative monetary penalty can be up to \$40,000. Alternatively, a penalty resulting from a court prosecution can be up to \$200,000 or 6 months in jail.

PURPOSE OF THIS DOCUMENT

The *Environmental Management Act Orders Handbook* document provides advice and step-by-step guidance for staff when using three types of orders. The purpose of this document is to ensure:

- orders are used appropriately within their legal authority;
- a fair and consistent administrative process is followed to issue orders; and
- greater efficiency when selecting, writing and ensuring compliance with orders.

This will result in improved effectiveness of orders and increased compliance with regulatory requirements under EMA, thereby enhancing the Ministry's protection of the environment, human health and public safety.

Scope

This handbook was written to support staff in the Regional Operations Branch of the Environmental Protection Division. Statutory Decision Makers (SDMs) should consider this document and apply it, but only to the extent to which it is relevant to a particular decision. SDMs must *NOT* allow this document to fetter their professional discretion. Complex, atypical or exigent circumstances will continue to arise and SDMs must apply their professional expertise and judgement when performing their duties.

The EMA orders covered in this document are:

- i. Information Order (section 77)
- ii. Pollution Prevention Order (section 81)
- iii. Pollution Abatement Order (section 83)

The guidance in this document are complementary to and do not replace those of the Land Remediation Program, the Environmental Emergency Response Program and the Conservation Officer Service. Staff seeking guidance about issuing orders when responding to environmental emergencies or contaminated sites should contact the respective program.

Acknowledgements

Authors: Jane Hofweber, Jason Bourgeois, Marty Roberts

Executive approval: Jennifer McGuire

Reviewers:

- Strategic Policy Branch - Gwenda Laughland
- Regional Operations Branch - Cassandra Caunce, Robyn Roome, Christa Zacharias-Homer, Patricia Aikens, Neil Bailey, Neil Waters, Stephanie Little, Dave Hebert, Matthew Beckett and Maureen Bilawchuk
- Land Remediation Section - Alan McCammon
- Business Services Section - Ben Vander Steen
- Conservation Officer Service - Cynthia Mann
- Ministry of Justice - Ben Naylor, Karmen Lisaingo, Jeff Van Hinte, and Margot Foster

CHAPTER 1: OVERVIEW OF ORDERS

1.1 What is an Order?

An order is a written, legal instrument used by a person with designated or delegated authority. An order under EMA is a tool to manage a risk to the environment, human health or public safety.

Orders are effective for:



Responding quickly to prevent or stop impacts to the environment, human health and public safety.



Changing behaviour and achieving compliance with regulatory requirements by giving site-specific direction.



Levelling the “playing field,” by ensuring that no person benefits from not complying with the *Environmental Management Act*.



Deterring other potential violators.



Establishing a record of the person’s willingness, or lack thereof, to comply with regulatory requirements.

1.2 Types of Orders

This document focuses on the following three types of order-making authorities:

Information Order - Section 77 Used by a director to determine if a Pollution Prevention Order or a Pollution Abatement Order should be issued	Criteria for selecting – p 16
	Tips for writing – p 32
	Template and example – p 34
Pollution Prevention Order - Section 81* Used by a director to preventing pollution from occurring	Criteria for selecting – p 17
	Tips for writing – p 40
	Template and example – p 42
Pollution Abatement Order - Section 83* Used by a director to control, abate, or stop pollution	Criteria for selecting – p 18
	Tips for writing – p 50
	Template and example – p 53

*Municipal Pollution Prevention Orders (under EMA Section 82) and Municipal Pollution Abatement Orders (under Section 84) are not addressed in this guidance document. In a government to government relationship, it is typically more appropriate to use other tools to address pollution concerns, human health and safety issues and environmental impacts. For this reason, only the Minister has the authority to issue an order to a municipality.

1.3 Use of Orders

Each type of order can only be used for its legally defined purpose. Orders used for a purpose not prescribed by EMA are not permitted and may result in the order being reversed by an appeal board or judge. Depending on the order, the SDM is provided with an authority to intervene and address a risk of pollution occurring, a site where pollution is occurring and/or environmental impacts after pollution has occurred.

Intervening with an Order

Staff adhere to a variety of Ministry policies when determining an appropriate response to a situation needing government intervention. In particular, the [Compliance and Enforcement Policy and Procedure](#) provides staff with advice about the range of intervention responses and enforcement tools available. Guided by policy, staff use their professional judgement to choose the response best suited to a particular problem and its surrounding circumstances. Staff intervene with an order when it is necessary to gather information about a pollution risk, require pollution management actions to be undertaken or for these two reasons in combination.

- I. **Gathering information:** Three types of orders are used to gather information; however, the context for using each one is different. When not enough information is available to determine whether there are reasonable grounds to issue a Pollution Prevention Order or Pollution Abatement Order, an Information Order is used. If there are reasonable grounds to issue a Pollution Prevention Order and additional information is needed about the activity, operation or substance, the Pollution Prevention Order should include a requirement to provide that information. When there are reasonable grounds to issue a Pollution Abatement Order and additional information is needed about the pollution, the Pollution Abatement Order should include a requirement to provide that information.

Orders Used to Gather Information:



- II. **Pollution management:** Two types of orders are used to manage pollution. They are used to prevent pollution from occurring, stop further pollution from occurring and address pollution-related environmental impacts.

Orders Used to Manage Pollution:



Can More Than One Order Be Used?

Yes. Each type of order has a different purpose and a different set of statutory powers. Sometimes, it is appropriate to use one type of order first and then use a different type of order to address the remaining issues. For example, an Information Order could be issued to satisfy the director on reasonable grounds that pollution had occurred at a site. After receiving the information required by the first order, the director could then decide that it was necessary to intervene and issue a Pollution Abatement Order. The actions required by the second order would ensure that the pollution at the site will be addressed appropriately and within a reasonable amount of time.

Does Using an EMA Order Impact the Use of an EMA Prosecutorial Enforcement Tool?

No, it does not. An SDM can issue an Information Order, Pollution Prevention Order or a Pollution Abatement Order without impacting a Conservation Officer's ability to issue a ticket or recommend the laying of charges to the Crown prosecutor for the same non-compliance issue. The SDM should consult with the Conservation Officer Service prior to issuing the order.

Does Using an EMA Order Impact the Use of an EMA Administrative Enforcement Tool?

No, it does not. An SDM can issue an order without impacting his/her ability to issue an administrative penalty, administrative sanction or another order. For example, if a Pollution Abatement Order was issued to address an ongoing discharge of a substance that is causing pollution, it could be followed by an administrative penalty to address the non-compliance.

Are EMA Orders Punitive?

No, orders under EMA are not punitive. Each order making authority provides a specific set of statutory powers to identify and address actual or potential impacts to the environment, human health and safety. An order might require a person to undertake actions at their own expense to correct a problem, but those requirements are not imposed as a punitive measure.

In fact, none of the Ministry's administrative enforcement tools impose punitive measures. Only the Ministry's prosecutorial enforcement tools (violation tickets and court prosecutions) impose punitive measures.

For offences under EMA, punitive measures are only imposed by the courts through violation ticket fines, court fines, imprisonment and court ordered payments to the *Habitat Conservation Trust Foundation*.



1.4 Who Can Issue Orders

To Whom Does EMA Provide Order-Making Powers?

For most orders under EMA, either the minister or director is referred to in the legislation as having the power to issue them. For Information Orders, Pollution Prevention Orders and Pollution Abatement Orders a **director** is referred to as having the power to issue them. In other words, for those types of orders, the SDM must either be a director or a delegate of a director.

What Does “Director” Mean in EMA?

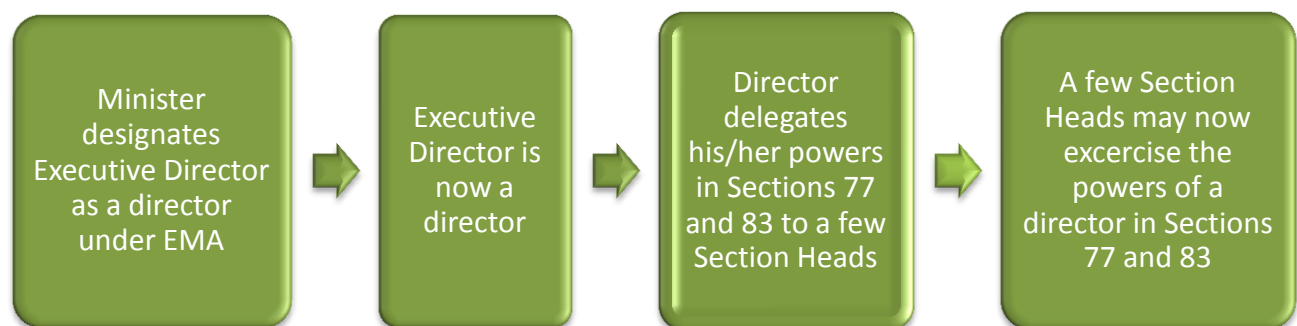
Defined in EMA, a ‘director’ means a person employed by the government and designated in writing by the minister as a director of waste management or as an acting, deputy or assistant director of waste management. For example, the Minister might designate the Executive Director of the Regional Operations Branch to be “a director”. This designated person would then have all of the powers of a director under EMA. Under EMA Section 3(2) a reference to the director includes a reference to a delegate of the director.

Who Can be a Delegate of the Director?

Any person can be a delegate of a director.

EMA Section 3(1) “...a director may delegate any of his or her powers, duties or functions under this Act, except the power to establish protocols, to any person, subject to the terms and conditions the director considers necessary or advisable.”

Example of a “director” designation followed by delegation of specific director powers in EMA:



1.5 Public Reporting of Orders

At the Ministry of Environment, orders are reported publicly in two places: the *Quarterly Environmental Enforcement Summary* and the *Environmental Violations Database*.

The Ministry has the authority to publicly report Pollution Prevention Orders and Pollution Abatement Orders. Given that these orders are publicly reported, the recipient is typically given an opportunity to comment on a draft version of the order prior to it being finalized, unless there are exigent circumstances that make this impractical. Information Orders are not publicly reported.

The purpose of publicly reporting orders is to:

- be publicly accountable and transparent about Ministry actions;
- demonstrate how the Ministry is ensuring compliance with its environmental protection, human health and safety laws; and
- provide both specific deterrence to the individual and general deterrence to others.

The *Ministry of Environment Act* gives the Ministry the authority to publish the names of persons who have been issued an order (see excerpt below):

Ministry of Environment Act

6.1 (1) In this section..."sanction" includes a direction, decision or **order**.

(2) In accordance with section 33.1 (1) (c) of the *Freedom of Information and Protection of Privacy Act*, the minister may disclose the following information inside or outside Canada with respect to a person who is convicted of an offence, has paid or is liable to pay an administrative penalty or is subject to another sanction under an enactment:

- a) the name of the person;
- b) the provision of the enactment that the person contravened or under which a sanction has been imposed;
- c) the location at which the contravention occurred or the conduct or circumstances that resulted in the sanction arose;
- d) a description of the contravention or the conduct or circumstances that resulted in the sanction;
- e) the fine, sentence, administrative penalty or other sanction to which the person is subject;
- f) if a fine or administrative penalty is overdue, the date it was due and the outstanding amount.

1.6 Aspects of Law

This section provides an overview of relevant constitutional law, administrative law and provincial statute law concepts in the context of issuing an order under EMA. This section does not provide guidance on responding to emergency or exigent circumstances.

Is There a Duty to Consult with First Nations?

The government has a legal duty to consult and, where required, accommodate First Nations when it proposes a decision or activity that has the potential to adversely affect their claimed or proven aboriginal rights (including title) or treaty rights (“Aboriginal Interests”). For example, the duty to consult would likely be triggered when the government considers whether to approve a waste discharge authorization for a mine located within the traditional territory of a First Nation.

Consideration should also be given as to whether the duty to consult is triggered in the context of making Pollution Prevention Orders or Pollution Abatement Orders. These types of orders are intended to prevent pollution from occurring, or to control, abate or stop pollution, which would generally be unlikely to have adverse impacts on First Nations’ Aboriginal Interests. However, there may be terms under the order that could trigger the duty. For example, a Pollution Prevention Order may require the construction of works in a sensitive area or place with specific value to First Nations. As another example, if a Pollution Abatement Order requires remediation work, the clean-up activities required and the remediation standards for soil and water quality might affect First Nations’ Aboriginal Interests and trigger the duty to consult. When in doubt, legal guidance may be sought from the Ministry of Justice.

Furthermore, the timing of an order should be given consideration. The duty to consult is required to be satisfied before the relevant decision is made; however, in the case of an environmental emergency, sometimes there is no time for consultation to occur because it is necessary to act immediately to protect the environment. In such cases, if a decision to issue an order is made without prior consultation, then staff should plan on engaging First Nations in relation to any requirements of the order that may trigger the duty to consult as soon as practical after the decision, and be open to amending the order, if necessary, as a result of the consultation.

For more information about the duty to consult please refer to the [*Updated Procedures for Meeting Legal Obligations When Consulting First Nations*](#). The document describes the Province’s approach to consulting and accommodating First Nations where a proposed decision or activity may affect claimed or proven aboriginal rights (including title) or treaty rights. The primary web site for information on the Consultation Process and Agreements is http://cguide.nrs.gov.bc.ca/docs/html_files/index.html.

Staff are also required to follow all existing consultation and accommodation procedures agreed to by the provincial government and individual First Nations. These procedures may be found in agreements such as Strategic Engagement Agreements, Reconciliation Agreements, Interim Treaty Agreements, Final



Agreements, and Economic and Community Development Agreements. They can be accessed on the provincial government's [First Nations Negotiations](#) webpage.

How do the Principles of Administrative Law Apply to Orders?

Administrative law is a body of common law that establishes guidelines for exercising statutory decision-making powers. The principles of administrative law are based in common law and address both the procedures by which a decision is made and the substance of the decision. The goal is to ensure government officials use fair procedures and make reasonable decisions. Below are two examples of how administrative law principles apply to orders.

- Before a government official imposes a new set of regulatory requirements on a person through an order, that person should first be provided with an opportunity to review the information that is being considered by the government official, and have an opportunity to submit his/her response to it. In the context of issuing an order under EMA, the opportunity to be heard is usually provided by sending the person a draft version of the order, before the SDM makes his/her final decision and issues it. The procedures for this are further described in the "Issue and Serve the Order" section of this document.
- It is important that the government official who decides a case be the same government official who heard the evidence in that case. In the context of issuing an order under EMA, the SDM must arrive at his/her decision about which new requirements to impose by considering all relevant information about the situation and must not allow someone else to make the decision for him/her. The SDM who has heard the relevant information must be the same SDM who decides which requirements will be imposed by the order. Although support staff often assist in drafting the requirements in an order, SDMs still fulfill their duty of procedural fairness to "hear" the case before arriving at a decision and issuing the order.

Principles of Administrative Law:

- the duty to act in good faith and without bias in making the statutory decision;
- the duty to give each person (named in the Order) an opportunity to know the information upon which the decision will be based and respond to that information; and,
- for the person who hears the case to decide.

Does the SDM Make Determinations of Legal Liability?

No. It is the SDM's role to be fair when intervening in a situation to manage risk, address pollution or respond to non-compliance; however, it is not the SDM's role to make determinations of legal liability.

What if a Person's Financial Stability is Questionable?

Experience has shown that when a person is in financial difficulty, they are more inclined to avoid costs to comply with environmental regulations. Accordingly, in cases where a person's financial

stability or solvency is questionable, the SDM needs to consider moving more quickly with the issuance of an order at the site to ensure environmental protection measures are in place. Issuing the order also provides the added assurance that if the person declares bankruptcy, the Ministry can be secured as a creditor because of the issuance of the order. The order places the Ministry in the position of potentially being able to secure funds to address any remediation or mitigation required at the site.

What Does “Reasonable Grounds” Mean?

“Reasonable grounds” is a set facts or circumstances that lead one to come to a conclusion beyond that of mere suspicion. To have reasonable grounds an SDM only needs to conclude that (s)he has compelling and credible information which gives rise to more than a mere suspicion that the legislative test for government intervention has been met. This is a lower standard of proof than “on a balance of probabilities”.

Compelling and credible information giving rise to more than a mere suspicion

The “reasonable grounds to believe” standard has been explained by the Supreme Court of Canada (“SCC”) in the case *Mugesera c. Canada* (Ministre de la Citoyenneté & de l'Immigration), 2005 SCC 40, at paragraph 114:

[...] the "reasonable grounds to believe" standard requires something more than mere suspicion, but less than the standard applicable in civil matters of proof on the balance of probabilities [...] In essence, reasonable grounds will exist where there is an objective basis for the belief which is based on compelling and credible information.

Why Is Reasonable Grounds Important When Issuing An Order?

Information Orders are issued for the purpose of determining whether there are reasonable grounds to issue a Pollution Prevention Order or Pollution Abatement Order. Pollution Prevention Orders and Pollution Abatement Orders may not be issued unless the SDM has reasonable grounds to do so.

- To issue a Pollution Prevention Order the director must be “**satisfied on reasonable grounds**” that an activity or operation has been or is being performed by a person in a manner that is likely to release a substance that will cause pollution.



- To issue a Pollution Abatement Order the director must be “**satisfied on reasonable grounds**” that a substance is causing pollution.



For an example of how **reasonable grounds** are written into each type of order listed above, see the “Write the Order” section of this document.

What Does “on a Balance of Probabilities” mean?

If something is decided on a balance of probabilities it means that the decision is supported by the greater weight of evidence. For example, 51% of the evidence is in favour of the decision.

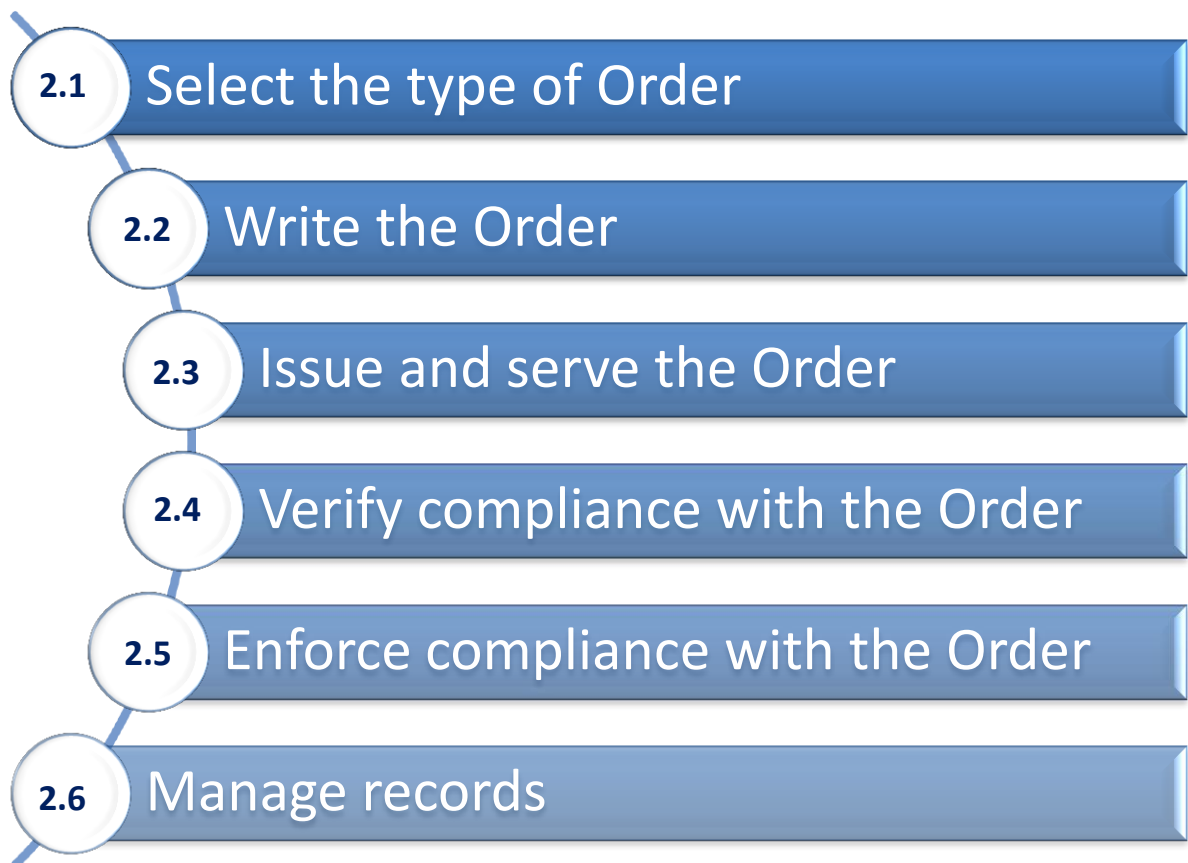


Why Is a Balance of Probabilities Important When Enforcing Compliance with an Order?

When a person fails to comply with a requirement in an order, the typical enforcement response is an administrative penalty. To issue an administrative penalty an SDM must determine whether the person failed to comply based on a balance of probabilities.

Chapter 2: GUIDANCE FOR USING AN ORDER

Successful use of orders depends upon staff having clear guidance and access to support tools. These are organized under six headings in this document:



These headings are relevant to a variety of staff roles; however, only a person with statutory authority may issue an order, and only a person with inspection powers may conduct an inspection to verify compliance with an order.

2.1 Select the Type of Order

Selecting the appropriate tool to intervene in a waste management problem will lead to an effective waste management solution. When the appropriate intervention tool is an order, it is also important to select the appropriate type of order. This section of the document describes the process used to select the appropriate type of order.

Criteria for Selecting the Appropriate Type of Order

For each type of order, there are specific circumstances under which it can be used, limitations on the requirements it can impose, specific statutory authority that the SDM must possess and limitations on the type of person that it can be issued to.

Staff use the following criteria to ensure that the appropriate order is selected:

- ✓ Circumstances surrounding the situation must meet the criteria for using the selected order;
- ✓ Requirements to be imposed must be within the scope of powers for the selected order;
- ✓ Must be issued by a person with Statutory Decision Making (SDM) authority under that particular section of EMA; and
- ✓ Person named in the order must meet the criteria listed in the statute.

The following tables apply the selection criteria to the three types of orders.

2.1.1 Information Order (s77)

When may it be used?	
<p>An Information Order may only be used when the information is related to:</p> <ul style="list-style-type: none"> ✓ the operations or activities of the industry, trade or business, or ✓ substances used, stored, treated or introduced or caused or allowed to be introduced into the environment in the course of the industry, trade or business. 	<p>Example of when it may not be used:</p> <ul style="list-style-type: none"> × when the information is not related to a company's operations, activities or substances.
What may it require?	
<p>An Information Order may only be used to require information that is needed by a director to determine if a Pollution Prevention Order or a Pollution Abatement Order should be issued.</p>	<p>Examples of what it may not be used to do:</p> <ul style="list-style-type: none"> × to require information from a municipality × to gather information in support of an investigation × to compel compliance with an existing requirement to provide information × to require ongoing, repeated measurements or other data collections in lieu of amending an authorization, regulation, or Code of Practice.
Who are the SDMs?	
<p>An Information Order may only be issued by a director. According to the EPD Delegation Matrix, the authority of a director under Section 77 is delegated to:</p> <ul style="list-style-type: none"> ✓ ROB Compliance Section Heads ✓ ROB Directors ✓ ROB Executive Director 	<p>Example of who may not issue it:</p> <ul style="list-style-type: none"> × a staff member who has not been delegated the powers of a director under EMA Section 77.
To whom may it be issued?	
<p>An Information Order may only be issued to a person who is conducting an industry, trade or business. However, the industry, trade or business does not have to be prescribed in the Waste Discharge Regulation of EMA.</p>	<p>Example of who it may not be issued to:</p> <ul style="list-style-type: none"> × a person that is not conducting an industry, trade or business × a municipality; including an individual in their official capacity as an employee of a municipality.

2.1.2 Pollution Prevention Order (s 81)

When may it be used?	
A Pollution Prevention Order may only be used when a director is satisfied on reasonable grounds that an activity or operation has been or is being performed in a manner likely to release a substance that will cause pollution.	<p>Example of when it may not be used:</p> <ul style="list-style-type: none"> × when there aren't reasonable grounds to believe that pollution is likely to occur × when the person is in compliance with the regulatory requirements.
What may it require?	
<p>A Pollution Prevention Order may only be used to require a person to:</p> <ul style="list-style-type: none"> ✓ provide to the director information the director requests relating to the activity, operation or substance ✓ undertake investigations, tests, surveys or any other action the director considers necessary to prevent the pollution and report the results to the director ✓ acquire, construct or carry out any works or measures that are reasonably necessary to prevent the pollution ✓ adjust, repair or alter any works to the extent reasonably necessary to prevent the pollution. 	<p>Examples of what it may not be used to do:</p> <ul style="list-style-type: none"> × to amend, change, over-ride or alter an existing requirement, including a permit condition.
Who are the SDMs?	
A Pollution Prevention Order may only be issued by a director. According to the EPD Delegation Matrix , the authority of a director under Section 81 is delegated to ROB Directors and Executive Director.	<p>Example of who may not issue it:</p> <ul style="list-style-type: none"> × a staff member who has not been delegated the powers of a director under EMA Section 81.
To whom may it be issued?	
<p>A Pollution Prevention Order may only be issued to:</p> <ul style="list-style-type: none"> ✓ a person who previously had or now has possession, charge or control of the substance ✓ a person who previously did anything, or who is now doing anything, which may cause the release of the substance or ✓ a person who previously owned or occupied, or now owns or occupies, the land on which the substance is located. 	<p>Example of who it may not be issued to:</p> <ul style="list-style-type: none"> × a municipality × a previous owner or operator of a (mining) exploration site in respect of the exploration site (see definition of an exploration site in EMA Section 65(1)).

2.1.3 Pollution Abatement Order (s 83)

When may it be used?	
A Pollution Abatement Order may only be used when a director has reasonable grounds to believe that a substance is causing pollution or has caused pollution. Furthermore, it may be used even though the introduction of the substance is not prohibited under EMA.	Example of when it may not be used: × when pollution is not occurring or has not already occurred.
What may it require?	
A Pollution Abatement Order may only be used to: ✓ provide to the director information that the director requests relating to the pollution ✓ undertake investigations, tests, surveys and any other action the director considers necessary to determine the extent and effects of the pollution and to report the results to the director ✓ acquire, construct or carry out any works or measures that are reasonably necessary to control, abate or stop the pollution ✓ adjust, repair or alter any works to the extent reasonably necessary to control, abate or stop the pollution ✓ abate the pollution ✓ carry out remediation in accordance with any criteria established by the director.	Examples of what it may not be used to do: × n/a
Who are the SDMs?	
A Pollution Abatement Order may only be issued by a director. According to the EPD Delegation Matrix , the authority of a director under Section 83 is delegated to: ✓ ROB Compliance Section Head ✓ ROB Directors ✓ ROB Executive Director	Example of who may not issue it: × a staff member who has not been delegated the powers of a director under EMA Section 83.
To whom may it be issued?	
A Pollution Abatement Order may only be issued to a person who: ✓ had possession, charge or control of the substance at the time it was introduced or escaped into the environment ✓ owns or occupies the land on which the substance is located or on which the substance was located immediately before it was introduced into the environment, or ✓ caused or authorized the pollution.	Example of who it may not be issued to: × a municipality × a previous owner or operator of a (mining) exploration site in respect of the exploration site (see EMA Section 65(1)).

2.2 Write the Order

This section explains the basic components of an order, general rules for writing an order, specific tips, templates and examples for three of the most commonly used EMA orders.

2.2.1 General Rules

Below are general rules for writing an order that will be effective in achieving compliance.



Who... does what... by when... to whom: Be clear and concise. It is unnecessary to write a preamble and detailed rationale for the order.



Brevity: Be brief and use short, simple sentences.



Professional: Use a formal tone and a vocabulary that doesn't require specialized knowledge to understand. Limit the use of technical terms and jargon. Refer to a particular Officer under EMA, if appropriate. For example, "Officer Smith inspected the storage area."



Consistent: An SDM might decide to impose similar requirements and use similar wording when addressing a situation similar to one addressed in the past. However, the requirements written in an order must be the result of an independent and unfettered decision made solely by the SDM and only after providing the person(s) with an opportunity to comment and then considering all of the available information that is relevant to the decision.

2.2.2 Setting Enforceable Requirements

Be clear about what you are ordering the person to do (or not do). Keep in mind that someone from the Ministry will be verifying compliance with each requirement. Include a list of the actions the person is to undertake or is prohibited from doing. Focus on what they are required to do, achieve, or not do. Avoid prescribing how to come into compliance.

Be reasonable when imposing requirements and setting a limit for when those requirements must be met. Each requirement might need its own unique deadline. Give consideration to the:

- Impacts to the environment, human health and safety;
- Degree to which an emergency response is necessary;
- Impacts on the ordered person (e.g. implementation constraints, complexity, cost, availability of people and materials); and
- What a 3rd party (e.g. Environmental Appeal Board or Court) is likely to consider “reasonable” given the circumstances.

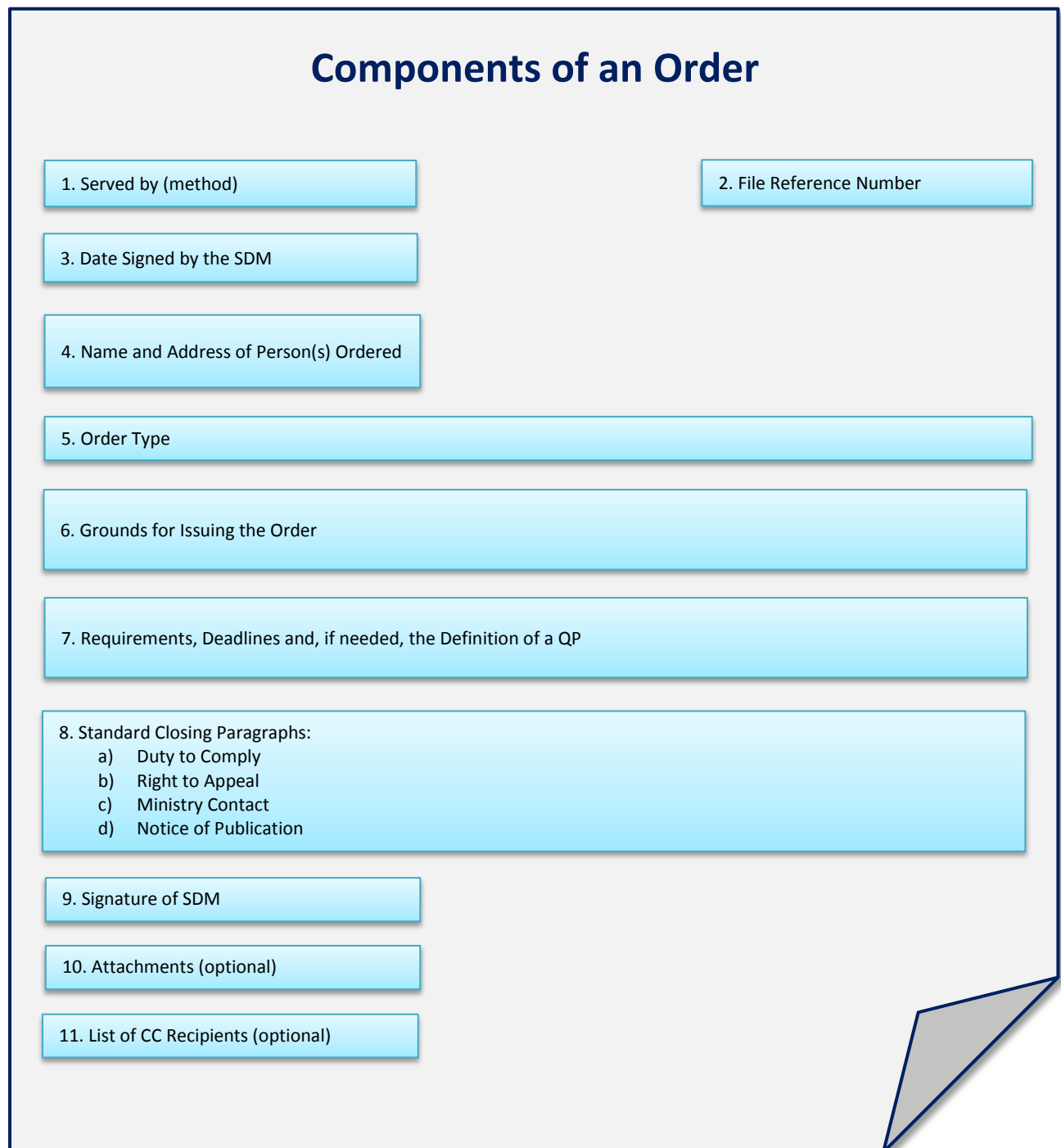
Be specific when setting a date and time for the person to comply with the order. The requirements in an order must be time-limited, and the compliance deadline must be time-specific. Typically, the time specified in compliance deadlines is **midnight** for Information Orders, Pollution Prevention Orders and Pollution Abatement Orders.



If an ongoing requirement is needed, consider amending the authorization, code of practice or regulation. Do not use an order to set ongoing requirements.

2.2.3 Components of an Order

All types of orders have a common set of basic components. In the diagram below, each component has a reference number. These numbers appear in the following pages accompanied by detailed guidance about the current best practices for writing an order.



Understanding Each Component

1. Served by (method): State whether the order will be served by registered mail or in-person delivery. Typically, orders are served by registered mail.
2. File Reference Number: The Authorization Management System (AMS) assigns a unique identification number for the order automatically. It is not necessary to add identification numbers from the Natural Resource Inspection System (NRIS) record and related AMS record. Instead, this information should be kept in the Environmental Protection Division's (EPD's) e-filing system for easy cross-referencing.
3. Date Signed by the SDM: Use the date that the order is signed by the Statutory Decision Maker (SDM). The signature date is considered to be the data on which the order is issued. However, the effective date of the order is likely different, and depends upon the method used to serve the order. For information about the effective date of an order, please see the *Issue and Serve the Order* section of this document.
4. Name and Address of Person(s) Ordered: Select the correct person(s) to name in the order and the correct address for serving the order. For advice on who to name in the order, please refer to Chapter 2.2.4 in the section which follows.
5. Order Type: Write the order type that was selected. In AMS, there is a drop down list to choose from. For guidance on selecting the appropriate type of order, please refer to the *Select the Type of Order* section of this document.
6. Grounds for Issuing the Order: Provide the facts and decision-making rationale for issuing the order (except for an Information Order). For a description of reasonable grounds, please refer to Chapter 1.6.
7. Requirements, Deadlines and, if needed, the Definition of a Qualified Professional:
 - State each new requirement and the date and time by which the person(s) must comply;
 - Ensure that all requirements and deadlines are reasonable and that each requirement is verifiable and enforceable. For advice on setting enforceable requirements in an order, please refer to Chapter 2.2.2; and
 - Include the template's definition of a Qualified Professional when requiring the person to retain the services of a Qualified Professional.
8. Standard Closing Paragraphs: These paragraphs help ensure a fair administrative process. They are:
 - Duty to Comply: Describes the person's duty to comply with the order and warns that failure to comply is an offence and may result in enforcement action.
 - Right to Appeal: Describes the person's right to file an appeal with the Environmental Appeal Board (EAB). If an EAB hearing is scheduled, this does not imply the quality of the

order was poor, or that the Statutory Decision Maker's process was unfair. It only means that the person feels aggrieved by a decision of a director.

- Contact Information: Provides information about how to contact the Ministry which includes a phone number and an email address.
- Notice of Publication: Ensures the person is aware of the potential for the order to be publicly disclosed and included in the Quarterly Environmental Enforcement Summary and the Environmental Violations Database.

9. **Signature of Statutory Decision Maker:** An order may only be signed by someone with the statutory authority to issue it. The SDM's handwritten signature is saved as an image file and inserted electronically by the SDM through AMS. The signature block should include the word "Director". An order signed by a person who didn't have the authority to do so might be grounds for an appeal and might affect subsequent enforcement actions.
10. **Attachments:** Lists attachments such as photos and inspection records, as appropriate. For instance, a photograph of a waste discharge site might be attached because it relates to the work required by the order. This might also help the person who is named in the order to better understand the order's requirements.
11. **List of "CC" Recipients:** The SDM should "CC" a party that has a financial interest in the situation, but who is not necessarily responsible for complying with the order. Name each person who will be sent a copy of the order. Limit the number of "carbon copies" of the order to only those that have a direct interest in the situation. Be aware there might be reasons to NOT "CC" a particular person for privacy concerns.

Considerations for determining the list of "CC" recipients include:

- the protection of the person's privacy
- the interests of a property owner who might not be aware of a lease-holder's activities; and
- the interests of other government agencies

2.2.4 Naming the Appropriate Person(s) in an Order

The legislation sets out who *can* be named in each type of order and the circumstances surrounding the situation determine who *should* be named in each individual order. The following section provides detailed guidance for naming the appropriate person(s) in an order.

Who Can Be Named in the Order?

For each type of order, EMA set out who can be named in the order. The table below provides the exact wording in EMA under Sections 77, 81 and 83.

According to EMA, who can be named?		
Information Order (section 77)	Pollution Prevention Order (section 81)	Pollution Abatement Order (section 83)
A person who is conducting an industry, trade or business.	<p>A person who previously had or now has possession, charge or control of the substance;</p> <p>A person who previously did anything, or is now doing anything, which might cause the release of the substance; or</p> <p>A person who previously owned or occupied, or now owns or occupies, the land on which the substance is located.</p>	<p>A person who had possession, charge or control of the substance at the time it was introduced or escaped into the environment;</p> <p>A person who owns or occupies the land on which the substance is located or on which the substance was located immediately before it was introduced into the environment; or</p> <p>A person who caused or authorized the pollution.</p>

Who Should Be Named in the Order?

“Who should be named” depends upon the specific facts of the situation and an analysis of what is appropriate under the circumstances. The appropriate person(s) to name in the order is (are) the person(s) who should be held accountable for compliance with the orders requirements. If it is reasonable for a person to be held responsible for complying with the order, then (s)he should be named in the order. This could be an individual, for example, the director of a company.

What Makes Naming the Appropriate Person(s) a Complex Task?

The wording in the legislation for Pollution Prevention Orders and Pollution Abatement Orders allows for a broad range of persons who **can** be named in the order. Sometimes, this broad range of options makes determining who **should** be named in the order a complex task.



Can More Than One Person Be Named in an Order?

Yes. It is appropriate to order multiple persons in a single order if they should each be responsible for complying with the same requirements. Do not use a separate order for each person. The named persons are jointly responsible for achieving compliance with the order's requirements; however, wording indicating each person's equal responsibility for compliance should be included in the order. To name multiple parties in an order use the term "joint and several". (See Appendix 2 for examples of order requirements)

Use a single order for multiple persons if each person is:

- regulated under EMA by the same requirement which was contravened,
- ordered to do the same action(s), and
- responsible for complying with the order.



Why Is Naming the Appropriate Person(s) Important?

There are financial and administrative implications for including a person's name in an order. For example, being named in a Pollution Abatement Order creates a public record of the person's

compliance history under EMA. The legislation provides for a wide range of options for who *can* be named in an order; however, who *should* be named in the order is based on who is/are the right person(s) to hold accountable for complying with the order. Keep in mind that choosing who to name in an order is not the same as making a determination of legal liability.

What Does “Person” Mean?

Defined in the *Interpretation Act*, the term “person” includes a corporation, partnership or party, and the personal or other legal representatives of a person to whom the context can apply according to law.

What Does “Corporation” Mean?

Defined in the *Business Corporation Act*, the term “corporation” means a company, a body corporate, a body politic and corporate, an incorporated association or a society, however and wherever incorporated, but does not include a municipality or a corporation sole. In any order, a corporation’s name must appear exactly as legally described in a corporate search. Failure to do so may invalidate the order as against the corporation. As per the *Business Corporation Act* Section 23 (1) and subject to section 51.21 (1) to be a corporation...

“... a company must have the word "Limited", "Limitée", "Incorporated", "Incorporée" or "Corporation" or the abbreviation "Ltd.", "Ltée", "Inc." or "Corp." as part of and at the end of its name.”



How Do I Ensure I Use the Correct Legal Name(s)?

Use the Authorization Management System (AMS), BC Online Registry Services and BC Land Title and Survey data to ensure that the correct legal name(s) will be used in the order. If the order relates to an authorization, use the name as it appears on the authorization in AMS. If the name in AMS is different than the name in BC Online, then use both the name on the authorization (AMS) and the name it is legally registered under (BC Online). Further to that, searching BC Land Title and Survey data ensures that the correct property owner is identified.



What if the Site is Not in AMS?

The availability of information will depend upon the type of regulatory relationship that the person has with the Ministry. If there is no data in AMS (no authorizations or previous orders) issued for that site, staff should begin by searching BC Online and the Land Title Office.

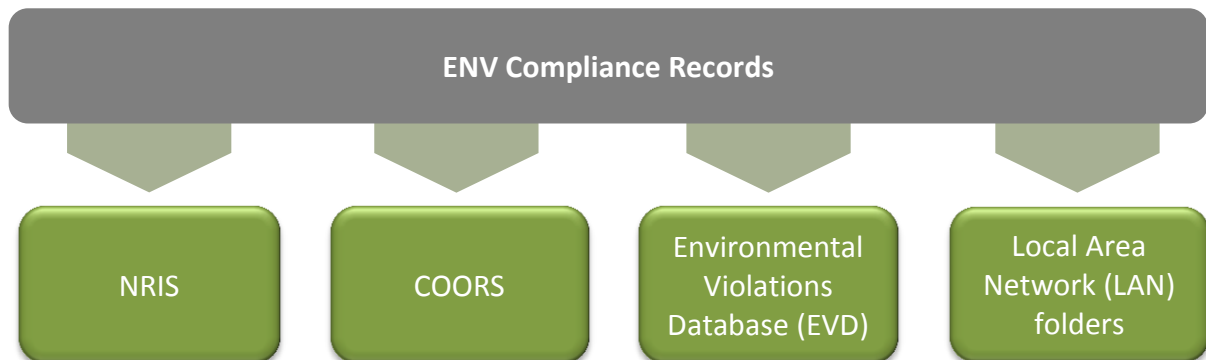
In addition, staff should search the Natural Resource Inspection System (NRIS) and contact the Conservation Officer Service (COS) to request a search of the Conservation Officer Online Records System (COORS). This ensures consistency when the Ministry is addressing a person and recording data in its various administrative systems.

NRIS contains names related to inspections and public complaints.

COORS contains names related to past enforcement actions taken by CO's. This includes warnings, tickets, hunting/fishing licence sanctions and prosecution cases.

Should I Check the Ministry's Compliance Records?

Yes. The person's compliance history is relevant when the Statutory Decision Maker (SDM) is considering which requirements to set in the order, as well as when an Environmental Protection Officer (EPO) is planning an inspection to verify compliance with those requirements.



Fictional Case Study

Who Should Be Named in the Order?

Cast of Characters:

- Maxine Fair-Maven (inspecting Environmental Protection Officer)
- Statutory Decision Maker (SDM in Ministry of Environment)
- Formula One Inc. (corporation under the *Business Corporation Act*)
- Danica Yattrick (Director at Formula One Inc.)
- Formula One fuel station in Mooseford (business operating at spill site) (Not a person.)
- Jack Lantern (owner of the Formula One business in Mooseford)
- Jack and Jill Lantern (property owners of spill site)
- Mayup Fuel Delivery (contractor business) (Not a person.)
- Bill Mayup (owner of Mayup Fuel Delivery)
- Phil Mayup (employee at Mayup Fuel Delivery)

Environmental Protection Officer, Maxine Fair-Maven, responded to a report of a diesel fuel spill at the Formula One fuel station in Mooseford. The fuel spilled down a slope at the back of the property and entered a fish-bearing stream. Officer Fair-Maven visited the site and provided a statutory decision maker (SDM) with inspection notes, photographs and sample results. The SDM had reasonable grounds to believe that pollution is occurring as a result of the spill and is now preparing to issue a Pollution Abatement Order under the *Environmental Management Act* (EMA).

Thus far, she has found that the cause of the spill was an error made by an employee of the contractor, Mayup Fuel Delivery. The employee, Phil Mayup, spilled a significant amount of fuel while making a delivery. The fuel station is a franchise of the Formula One Inc. corporation whose head office is in Ontario. The director of Formula One Inc. is former F1 racing champion and National Fuel Safety Board member, Danica Yattrick.



The EMA criteria for persons who can be named in a Pollution Abatement Order is any of the following:

- ☒ A person who had possession, charge or control of the substance at the time it was introduced or escaped into the environment
- ☒ A person who owns or occupies the land on which the substance is located or on which the substance was located immediately before it was introduced into the environment
- ☒ A person who caused or authorized the pollution

Officer Fair-Maven's BC Registry Services search revealed that the owner of this Formula One business in Mooseford is Jack Lantern. The business owner is also one of the two owners of the fuel station property.

The BC Land Title and Survey records revealed that the property is owned by Jack Lantern and Jill Lantern. Officer Fair-Maven's internal records search was unfruitful. No records were found in AMS because neither the fuel station nor the contractor have an authorization to discharge waste under EMA nor are they registered under one of EMA's Codes of Practice. No records were found for previous inspections or enforcement actions in NRIS and COORS either.

Question 1: Who fits the EMA criteria for who can be named in a Pollution Abatement Order?

Check all that apply:

- ☐ Formula One Ltd. (corporation under the Business Corporation Act)
- ☐ Danica Yattrick (Director at Formula One Inc.)
- ☐ Formula One fuel station in Mooseford (business operating at spill site) (Not a person.)
- ☐ Jack Lantern (owner of the Formula One business in Mooseford)
- ☐ Jack Lantern and Jill Lantern (property owners of spill site)
- ☐ Mayup Fuel Delivery (contractor business) (Not a person.)
- ☐ Bill Mayup (owner of Mayup Fuel Delivery)
- ☐ Phil Mayup (employee at Mayup Fuel Delivery)
- ☐ Additional person(s)

To determine what is appropriate in this circumstance, the SDM considers the facts surrounding the spill event and the respective roles of the business owner, property owners and the contractor's employee.

Question 2: Who should be named in the order? Check all that apply:

- ☐ Jack Lantern (owner of Formula One in Mooseford)
- ☐ Jack and Jill Lantern (property owners of spill site)
- ☐ Bill Mayup (owner of Mayup Fuel Delivery)
- ☐ Phil Mayup (employee at Mayup Fuel Delivery)

Bonus Question: If Maxine Fair Maven believed the diesel fuel was, for the moment, stationary in the soil column, would a Pollution Abatement Order still be the appropriate type of order to issue?

Answer 1: According to EMA, the following persons can be named in the Pollution Abatement Order:

- ☒ Jack Lantern as the owner of Formula One Mooseford business had possession of the fuel at the time it was introduced or escaped into the environment;
- ☒ Jack and Jill Lantern because they jointly own the land on which the spilled fuel is located;
- ☒ Bill Mayup because he owns the company that had possession of the fuel at the time it was introduced or escaped into the environment; and
- ☒ Phil Mayup spilled the fuel that caused the pollution.

Formula One Inc. and Danika Yatruck can't be named in the order because neither of them meet one of the three criteria in EMA. For clarity, the franchisor/franchisee relationship usually means that the franchisee has significant control over its own day-to-day operations. In this case, the franchisee (Formula One Mooseford) had complete control over its day-to-day operations and the franchisor (Formula One Inc.) had no control.

The companies Formula One and Mayup Fuel Delivery can't be named in the order because neither is a "person".

Answer 2: In the opinion of the SDM, it is appropriate to name the following persons in the Pollution Abatement Order:

- ☒ It is appropriate to name **Jack Lantern** in the Pollution Abatement Order because he is the best person to hold responsible for complying with the requirements in the order. He owns both the property and the Formula One Mooseford fuel station.
- ☒ It is also appropriate to jointly and separately name **Bill Mayup** because he owns the company that had possession of the fuel at the time it was spilled.

Jill Lantern shouldn't be named because she is only the co-owner of the land on which the fuel was spilled. It is reasonable to assume that naming Jack Lantern is sufficient. Phil Mayup shouldn't be named because it is reasonable to assume that the owner, Bill Mayup, would be responsible for his employee's actions.

Bonus Answer: No. A Pollution Prevention Order should be issued instead. This is because the substance is stationary and should be prevented from escaping and causing further damage.



2.2.5 Tips, Templates and Examples

The following pages provide guidance for the three types of orders under EMA used most often. It includes writing tips, templates and examples for each type of order. The example-orders are meant to create a common point-of-reference for staff when discussing orders with colleagues and supervisors.

This guidance material is provided in the following sections of this document:

Section	Guidance Material
2.2.5.1	Information Order <ul style="list-style-type: none">• Tips for writing• EMA excerpt• Template• Example
2.2.5.2	Pollution Prevention Order <ul style="list-style-type: none">• Tips for writing• EMA excerpt• Template• Example
2.2.5.3	Pollution Abatement Order <ul style="list-style-type: none">• Tips for writing• EMA excerpt• Template• Example

2.2.5.1 Information Order (s 77)

Tips for Writing

1. Only require information necessary to determine if a Pollution Prevention Order or Pollution Abatement Order should be issued. The information must relate to:
 - (a) the operations or activities of the industry, trade or business, or
 - (b) substances used, stored, treated or introduced or caused or allowed to be introduced into the environment in the course of the industry, trade or business.

Examples include:

- ✓ lab or 3rd party certified samples of substances that are leaking but of unknown toxicity;
- ✓ data on operations or emissions that are not otherwise regulated by a regulation or authorization; and
- ✓ a written description of operational procedures (*IF* understanding the operational procedures will help with determining whether to issue a Pollution Prevention/Pollution Abatement Order).

An Information Order can impose extraordinary costs on the person. The SDM must use their **discretion** to require only information which is necessary and reasonably attainable under the circumstances. Ordering a person to have information collected by a 3rd party should be required only when the circumstances (significance of the potential harm) warrant it or the 3rd party costs (e.g. lab samples) are a reasonable cost for this type of industry, trade or business.

2. Require reliable, accurate and useful information by specifying the measurement methodologies and other attributes of data collection, as appropriate for the circumstance.
3. Set a reasonable deadline for complying with the order requirement(s). Take into consideration the:
 - a. actual and potential environmental, human health and safety risks;
 - b. urgency;
 - c. complexity and time span of any measurements; and
 - d. involvement of 3rd party contractors.
4. Adhere to section 77 of EMA when writing this type of order. (see EMA excerpt on the following page)

EMA excerpt

(current as of May 2016)

Requirement to provide information

77 (1) For the purpose of determining whether there are reasonable grounds for making a pollution prevention order under section 81 [*pollution prevention orders*] or a pollution abatement order under section 83 [*pollution abatement orders*], a director may order a person who is conducting an industry, trade or business to provide to the director the information described in subsection (2) that the director requests, whether or not

- (a) the industry, trade or business is prescribed for the purposes of section 6 (2) [*waste disposal*], or
- (b) an activity or operation of the industry, trade or business is prescribed for the purposes of section 6 (3) [*waste disposal*].

(2) An order under subsection (1) must be served on the person to whom it applies and may require the person to provide, at his or her own expense, information relating to

- (a) the operations or activities of the industry, trade or business, or
- (b) substances used, stored, treated or introduced or caused or allowed to be introduced into the environment in the course of the industry, trade or business.

(3) Information required by an order under this section must be provided in the time and manner specified in the order.

(4) For the purposes of this section, "**person**" does not include a municipality.

Information Order (s 77) – Template



[Method of delivery]

[Date SDM signed]

AMS File: [number]

[Name and mailing address of person ordered]

Attn: [Correspondence contact]

Information Order - template

REASON FOR ISSUANCE

This Information Order is being issued under the authority of Section 77 of the *Environmental Management Act*, SBC 2003, c.53 (the “Order”). The information required to be produced under this Order will be used for determining whether there are reasonable grounds for making a Pollution Prevention Order (EMA Section 81) or Pollution Abatement Order (EMA Section 83).

This order is issued as a result of actions or activities on or about [site or facility]. The [site or facility] is located on the described land parcel:

[Lot__], [Plan__], [Section__], [Township__], [_____] Land District] (the “Land”)

ORDER:

[Name of Person or Persons] is/are hereby ordered to provide the following information to the director:

Item	Required Information:	Required by midnight on:
1.		
2.		
3.		

[Only include when imposing a requirement to retain the services of a Qualified Professional]

For the purposes of this Order, the following definition applies:

"Qualified Professional" means an applied scientist or technologist specializing in a particular applied science or technology, including agrology, biology, chemistry, engineering, geology or hydrogeology, who (a) is registered in British Columbia with the professional organization responsible for his or her area of expertise, acting under that professional association's code of ethics and subject to disciplinary action by that association, and (b) through suitable education, experience, accreditation and knowledge, may be reasonably relied on to provide advice within his or her area of expertise as it relates to this order, or (c) is approved by the director.

DUTY TO COMPLY

The requirements above must be undertaken on or before the associated "Required By" date. Failure to comply with the requirements of this order is a contravention of the *Environmental Management Act* [SBC 2003, c.53] and may result in legal action. I direct your attention to Section 120(10) of the *Environmental Management Act*, which reads:

"(10) A person who contravenes an order...that is given, made or imposed under this Act by a ...director...commits an offence and is liable on conviction to a fine not exceeding \$300 000 or imprisonment for not more than 6 months, or both."

Failure to comply with the requirements of this order may also result in an administrative penalty under the Administrative Penalties Regulation (*Environmental Management Act*) [B.C. Reg 133/2014] (Regulation). I direct your attention to Section 12(4) of the Regulation, which reads:

"(4) A person who fails to comply with an order under the [Environmental Management] Act is liable to an administrative penalty not exceeding \$40 000."

RIGHT TO APPEAL

This Order may be appealed to the Environmental Appeal Board in accordance with Part 8 of the *Environmental Management Act*. An appeal must be delivered within 30 days from the date that notice of this decision is given. For further information, contact the Environmental Appeal Board at 250-387-3464.

NOTIFICATION OF PUBLICATION

The Party is notified that the Province intends to publish on the Ministry of Environment website the entirety of any Regulatory Document provided that:

- a) The Province will provide written notice to the party of its intent to publish the Regulatory Documents at least [14] days prior to publication,
- b) The Province will not publish any information what could not, if it were subject to a request under section 5 FOIPPA, be disclosed under the Freedom of Information and Protection of Privacy Act, R.S.B.C. 1996, c. 165 as amended from time to time.

MINISTRY CONTACT

If you have any questions, please contact the undersigned at [phone and email] or Environmental Protection Officer, [name], at [phone and email]

From,

[Signature of SDM]

[Name of SDM]

[Director or Director's Delegate] under the *Environmental Management Act*

Attachments (Optional):

CC recipients:

Information Order (s 77) – Example

Registered Mail

Date: 20 August 2015

Order Number: 987654

Permit: PA-8888

Wood World Industries Ltd.
100 Canada Place, Burrard Street
Box 999666
Vancouver, BC
V7X 1T2

Attn: Chip Walsh, Foreman at Wood World Industries Ltd

Information Order - example

REASON FOR ISSUANCE

This Information Order is being issued under the authority of Section 77 of the *Environmental Management Act*, SBC 2003, c. 53. Information is required by the director for the purpose of determining if there are reasonable grounds to issue a Pollution Prevention Order or a Pollution Abatement Order. In particular, there are concerns that the discharge of particulate matter from the Planer Baghouse at the Cloud Bluff location of Wood World Industries Ltd might be causing pollution or is likely to cause pollution.

The location of the Cloud Bluff Planer Baghouse is 222 Deerman Road, Williams Lake, legally described as District Lot 1, Cariboo Land District, and owned and operated by Wood World Industries Ltd.

ORDER

Pursuant to Section 77 of the *Environmental Management Act*, I order **Wood World Industries Ltd.** to provide the following information:

Item	Required Information	Required by midnight on:
1.	An assessment of the operating efficiency of the current Planer Baghouse at Wood World Industries at the Cloud Bluff location.	November 20, 2015
2.	This Assessment Report must include whether it is adequately sized, designed, constructed, operated and maintained to contain and control particulate releases to the ambient air from the Planer Baghouse.	November 20, 2015
3.	This Assessment Report must also include an assessment of the Planer Baghouse's particulate capture efficiency (i.e. the system's capacity and effectiveness in removing particulate matter generated from the planer).	November 20, 2015

DUTY TO COMPLY

The requirements above must be completed on or before the associated “Required By” date. Failure to comply with the requirements of this order is a contravention of the *Environmental Management Act* [SBC 2003, c.53] and may result in legal action. I direct your attention to Section 120(10) of the *Environmental Management Act*, which reads:

“(10) A person who contravenes an order...that is given, made or imposed under this Act by a ...director...commits an offence and is liable on conviction to a fine not exceeding \$300 000 or imprisonment for not more than 6 months, or both.”

Failure to comply with the requirements of this order may also result in an administrative penalty under the Administrative Penalties Regulation (*Environmental Management Act*) [B.C. Reg. 133/2014] (Regulation). I direct your attention to Section 12(4) of the Regulation, which reads:

“(4) A person who fails to comply with an order under the [Environmental Management] Act is liable to an administrative penalty not exceeding \$40 000.”

RIGHT TO APPEAL

This decision may be appealed to the Environmental Appeal Board in accordance with Part 8 of the Environmental Management Act. An appeal must be delivered within 30 days from the date notice is given. For further information, please contact the Environmental Appeal Board at (250) 387-3464.

NOTIFICATION OF PUBLICATION

The Party is notified that the Province intends to publish on the Ministry of Environment website the entirety of any Regulatory Document provided that:

- a) The Province will provide written notice to the party of its intent to publish the Regulatory Documents at least [14] days prior to publication,
- b) The Province will not publish any information what could not, if it were subject to a request under section 5 FOIPPA, be disclosed under the Freedom of Information and Protection of Privacy Act, R.S.B.C. 1996, c. 165 as amended from time to time.

MINISTRY CONTACT

If you have any questions, please contact the undersigned at (250) 333-6666 or Billy.Mason@gov.bc.ca or Environmental Protection Officer, Mack Gene, at (250) 555-9999 or Mack.Gene@gov.bc.ca .

From,

Billy Mason

Billy Mason, M.Sc.

Director's Delegate under the *Environmental Management Act*

cc: Cariboo Interior Health Authority
Health Canada
Environment Canada

2.2.5.2 Pollution Prevention Order (s 81)

Tips for Writing

1. Describe the evidence providing reasonable grounds to issue the order. The essential elements are the date, location of the incident, the unauthorized activity and the substance likely to be released and thereby cause pollution.
2. Include requirements necessary to prevent pollution from occurring. The requirements in the order should be reasonable giving consideration to the significance of the potential harm and the financial burden being imposed on the person. The person may be ordered to:
 - a. provide information the director requests relating to the activity, operation or substance;
 - b. undertake investigations, tests, surveys or any other action the director considers necessary to prevent the pollution and report the results to the director;
 - c. acquire, construct or carry out any works or measures that are reasonably necessary to prevent the pollution;
 - d. adjust, repair or alter any works to the extent reasonably necessary to prevent the pollution; and,
 - e. inform / report to the director or an officer of the actions taken (when, what, how, etc.).
3. Use professional judgment to set a reasonable deadline for each requirement, considering the:
 - actual and potential environmental, human health and safety risks;
 - urgency;
 - complexity and time span of required actions; and,
 - involvement of 3rd party contractors.
4. Adhere to section 81 of EMA when writing this type of order. (see EMA excerpt on the following page)

EMA excerpt

(current as of May 2016):

Pollution prevention orders

- 81** (1) If a director is satisfied on reasonable grounds that an activity or operation has been or is being performed by a person in a manner that is likely to release a substance that will cause pollution, the director may order a person referred to in subsection (2), at that person's expense, to do any of the following:
- (a) provide to the director information the director requests relating to the activity, operation or substance;
 - (b) undertake investigations, tests, surveys or any other action the director considers necessary to prevent the pollution and report the results to the director;
 - (c) acquire, construct or carry out any works or measures that are reasonably necessary to prevent the pollution;
 - (d) adjust, repair or alter any works to the extent reasonably necessary to prevent the pollution.

(2) An order made under subsection (1) may be served on one or more of the following persons:

- (a) a person who previously had or now has possession, charge or control of the substance;
- (b) a person who previously did anything, or who is now doing anything, which may cause the release of the substance;
- (c) a person who previously owned or occupied, or now owns or occupies, the land on which the substance is located.

(3) An order made under subsection (1) may authorize a person or persons designated by the director to enter land for the purpose of preventing the pollution.

(4) The powers of a director under this section may not be exercised in relation to any part of an activity or operation that is in compliance with the regulations or a permit, approval, order, waste management plan or operational certificate or an authorization made under the regulations.

(5) For the purposes of this section, "**person**" does not include a municipality.

Pollution Prevention Order (s 81) – Template



[Method of delivery]

[Date SDM signed]

AMS File: [number]

[Name(s) and mailing address(es) of person(s) ordered]

Attention: [correspondence contact]

Pollution Prevention Order - template

This Order is being issued under Section 81 of the *Environmental Management Act*, SBC 2003, C. 53. I am satisfied on reasonable grounds that an activity at [site or facility] located at [address] in [town], British Columbia [has been or is being performed] by a person in a manner that is likely to release [substance] that will cause pollution. Specifically, the [site or facility] is located on the described land parcel:

[Lot___], [Plan___], [Section___], [Township___], [_____ Land District] (the “Land”)

Grounds For Issuance

I am satisfied that [person’s name] is a person who

- previously had or now has possession, charge or control of the substance;
- previously did anything, or who is now doing anything, which may cause the release of the substance; or
- previously owned or occupied, or now owns or occupies, the land on which the substance is located.

[Only include if multiple persons are being named in the Order.]

I am also satisfied that [person’s name (the “Parties”)] is a person who

- previously had or now has possession, charge or control of the substance;
- previously did anything, or who is now doing anything, which may cause the release of the substance; or,
- previously owned or occupied, or now owns or occupies, the land on which the substance is located.

The substance likely to be released in a manner that will cause pollution is [_____]
_____]

On [date], at [location of issue/problem] Officer [name of EPO conducting inspection] observed that pollution was likely to occur due to [_____].
Samples of the substance were taken by Officer [_____] at [location of each sample] and lab tests of those samples produced the following results:

- [location of sample], [data result] – which, if released, could [environment, human health and safety risks] ;
- [location of sample], [data result] – which, if released, could [environment, human health and safety risks] ;

Based on this information, I am satisfied on reasonable grounds that this activity/operation is being performed in a manner that is likely to release a substance that will cause pollution.

ORDER

Pursuant to Section 81 of the *Environmental Management Act* [SBC 2003] Chapter 53, [person(s) named in the Order] is/are hereby ordered to comply with the required actions listed in the table below and to provide information to the director indicating the completion of each action.

Item	Required Action	Required by midnight on:
1		
2		
3		

[Only include when imposing a requirement to retain the services of a Qualified Professional]

For the purposes of this Order, the following definition applies:

"Qualified Professional" means an applied scientist or technologist specializing in a particular applied science or technology, including agrology, biology, chemistry, engineering, geology or hydrogeology, who (a) is registered in British Columbia with the professional organization responsible for his or her area of expertise, acting under that professional association's code of ethics and subject to disciplinary action by that association, and (b) through suitable education, experience, accreditation and knowledge, may be reasonably relied on to provide advice within his or her area of expertise as it relates to this order, or (c) is approved by the director.

DUTY TO COMPLY

The requirements above must be completed on or before the associated “Required By” date. Failure to comply with the requirements of this order is a contravention of the *Environmental Management Act* [SBC 2003, c.53] and may result in legal action. I direct your attention to Section 120(10) of the *Environmental Management Act*, which reads:

“(10) A person who contravenes an order...that is given, made or imposed under this Act by a ...director...commits an offence and is liable on conviction to a fine not exceeding \$300 000 or imprisonment for not more than 6 months, or both.”

Failure to comply with the requirements of this order may also result in an administrative penalty under the Administrative Penalties Regulation (*Environmental Management Act*) [B.C. Reg 133/2014] (Regulation). I direct your attention to Section 12(4) of the Regulation, which reads:

“(4) A person who fails to comply with an order under the [Environmental Management] Act is liable to an administrative penalty not exceeding \$40 000.”

RIGHT TO APPEAL

This decision may be appealed to the Environmental Appeal Board in accordance with Part 8 of the *Environmental Management Act*. An appeal must be delivered within 30 days from the date notice of this order is given. For further information, please contact the Environmental Appeal Board at (250) 387-3464.

NOTIFICATION OF PUBLICATION

The Party is notified that the Province intends to publish on the Ministry of Environment website the entirety of any Regulatory Document provided that:

- a) The Province will provide written notice to the party of its intent to publish the Regulatory Documents at least [14] days prior to publication,
- b) The Province will not publish any information what could not, if it were subject to a request under section 5 FOIPPA, be disclosed under the Freedom of Information and Protection of Privacy Act, R.S.B.C. 1996, c. 165 as amended from time to time.

This order will also appear in the Ministry of Environment’s [Quarterly Environmental Enforcement Summary](#) and [Environmental Violations Database](#).

MINISTRY CONTACT

If you have any questions, please contact the undersigned at [phone and email] or Environmental Protection Officer, [name], at [phone and email]

From,

[Signature of SDM]

[Name of SDM]

[Director or Director's Delegate] under the *Environmental Management Act*

Attachments (Optional):

CC recipients:

Pollution Prevention Order (s 81) – Example



Registered Mail

Date: April 20, 2015

File: 99999

LAMBVILLE WATER AND SEWER
COMPANY INC.
9966 Lamb Lake Road
Lambville, BC
VOA 1K3

Pollution Prevention Order - example

This Order is being issued under Section 81 of the *Environmental Management Act*, SBC 2003, c. 53. I am satisfied on reasonable grounds that sewage at Lambville Water and Sewer Company Inc. located at 9966 Lamb Lake Road in Lambville, British Columbia is being stored in a manner that is likely to release sewage that will cause pollution. Specifically, the Lambville Water and Sewer Company Inc. ("LWS") facility is located on the described land parcel:

Lot 5, Plan 6, Section 65, Township of Lambville, Okanagan Land District (the "Land")

Grounds For Issuance

I am satisfied that LWS is a person who

- previously had or now has possession, charge or control of the substance;
- previously did anything, or who is now doing anything, which may cause the release of the substance; or
- previously owned or occupied, or now owns or occupies, the land on which the substance is located.

The substance likely to be released in a manner that will cause pollution is the liquid in three sewage treatment lagoons of LWS.

On March 30, 2015, LWS's three sewage treatment lagoons were inspected by staff from Ministry of Environment, Environmental Protection Division (Ministry). The inspection determined that LWS was out of compliance with the *Environmental Management Act* and its Municipal Wastewater Regulation registration, RE-77777. A summary of observations is as follows:

- All three lagoons appear to be at full capacity.

- There is no emergency storage, alternate storage or means of disposal at the sewage facility.
- The lagoons have not been built as per the design in the 2008 application.
- The aeration system is inadequate.
- There does not appear to be complete and operational disinfection equipment.
- The reclaimed water conveyance system does not appear to be complete and operational.
- The winter storage pond has not been built.

On April 8, 2015, a warning was issued to LWS in response to the non-compliances with the Municipal Wastewater Regulation and LWS provided an inadequate response.

Based on the review of available information and observations made by Ministry staff who attended the site on March 30, 2015, there currently is no storage capacity to accommodate incoming influent or a precipitation event, there are public residences in the vicinity of the lagoon structures, it is not known at this time of the geotechnical stability of the lagoon structures.

Therefore, I am satisfied on reasonable grounds that it is likely that sewage will be released into the receiving environment in an uncontrolled manner causing pollution and resulting in environmental, human health and safety impacts if the effluent volume in the treatment lagoons is not reduced and the treatment and disposal works are not completed and operational.

ORDER

Pursuant to Section 81 of the *Environmental Management Act* [SBC 2003] Chapter 53, Lambville Water & Sewer Company Inc. is hereby ordered to comply with the required actions listed in the table below and to provide information to the director indicating the completion of each action.

Item	Required Action	Required by midnight on:
1	Retain the services of a qualified professional to prevent additional volume of waste water to accumulate in the three sewage lagoons.	April 21, 2015
2	Submit the water balances of the three treatment lagoons to the director	April 21, 2015
3	Submit weekly water balance reports of the three treatment lagoons to the director until April 21, 2016	April 28, 2015
4	Submit the maximum operating level of the three sewage treatment lagoons, as designed and approved by a qualified registered professional, to the director.	April 28, 2015
5	Retain the services of a qualified professional to develop an Action Plan. This Action Plan must describe how and when LWS will: <ul style="list-style-type: none"> a. Fully characterize the water quality of the effluent. b. Reduce the volume of effluent in the three treatment lagoons. c. Complete the treatment and disposal works 	April 28, 2015

6	Submit the Action Plan to the director for approval	May 10, 2015
7	Implement the approved Action Plan	May 20, 2015
8	Submit a progress report to the director each week until August 1, 2015	May 27, 2015
9	Retain the services of a qualified professional to build the treatment and disposal works. These works must include a fully operational aeration system, disinfection system, reclaimed water conveyance system, and emergency, alternate storage or disposal at the facility, designed by qualified professionals.	May 30, 2015
10	Submit a completion report to the director	August 1, 2015

For the purposes of this Order, the following definition applies:

"Qualified Professional" means an applied scientist or technologist specializing in a particular applied science or technology, including agrology, biology, chemistry, engineering, geology or hydrogeology, who (a) is registered in British Columbia with the professional organization responsible for his or her area of expertise, acting under that professional association's code of ethics and subject to disciplinary action by that association, and (b) through suitable education, experience, accreditation and knowledge, may be reasonably relied on to provide advice within his or her area of expertise as it relates to this order.

DUTY TO COMPLY

The requirements above must be undertaken on or before the associated "Required By" date. Failure to comply with the requirements of this order is a contravention of the *Environmental Management Act* [SBC 2003, c.53] and may result in legal action. I direct your attention to Section 120(10) of the *Environmental Management Act*, which reads:

"(10) A person who contravenes an order...that is given, made or imposed under this Act by a ...director...commits an offence and is liable on conviction to a fine not exceeding \$300 000 or imprisonment for not more than 6 months, or both."

Failure to comply with the requirements of this order may also result in an administrative penalty under the Administrative Penalties Regulation (*Environmental Management Act*) [B.C. Reg. 133/2014] (Regulation). I direct your attention to Section 12(4) of the Regulation, which reads:

"(4) A person who fails to comply with an order under the [Environmental Management] Act is liable to an administrative penalty not exceeding \$40 000."

RIGHT TO APPEAL

This decision may be appealed to the Environmental Appeal Board in accordance with Part 8 of the *Environmental Management Act*. An appeal must be delivered within 30 days from the date notice is given. For further information, please contact the Environmental Appeal Board at (250) 387-3464.

NOTIFICATION OF PUBLICATION

The Party is notified that the Province intends to publish on the Ministry of Environment website the entirety of any Regulatory Document provided that:

- a) The Province will provide written notice to the party of its intent to publish the Regulatory Documents at least [14] days prior to publication,
- b) The Province will not publish any information what could not, if it were subject to a request under section 5 FOIPPA, be disclosed under the Freedom of Information and Protection of Privacy Act, R.S.B.C. 1996, c. 165 as amended from time to time.

This order will appear in the Ministry of Environment's [Quarterly Environmental Enforcement Summary](#) and [Environmental Violations Database](#).

MINISTRY CONTACT

If you have any questions, please call the undersigned at (250) 666-9999 or Maxine.FairMaven@gov.bc.ca or Environmental Protection Officer, Biz Larchibald, at (250) 444-8888 or Biz.Larchibald@gov.bc.ca.

From,

Maxine Fair-Maven

Maxine Fair-Maven
Director, Environmental Management Act

Cc: Conservation Officer Service, Ministry of Environment
Town of Lambville
Kootenay Regional District
Interior Health Authority
Health Canada

2.2.5.3 Pollution Abatement Order (s 83)

Tips for Writing

1. Describe the evidence providing reasonable grounds that a substance is causing pollution. The essential elements are:
 - a. the date,
 - b. name of the Officer who made the observations,
 - c. observed location of the substance,
 - d. sampling location(s),
 - e. sampling result(s), and
 - f. a comparison of results to safety standards. Include a description of the size and significance of any impacts to the environment and human health and safety that were observed by the Officer.
2. Include requirements necessary to abate the pollution. Focus on stopping further harm and stabilizing the situation. The person may be ordered to:
 - provide to the director information that the director requests relating to the pollution;
 - undertake investigations, tests, surveys and any other action the director considers necessary to determine the extent and effects of the pollution and to report the results to the director;
 - acquire, construct or carry out any works or measures that are reasonably necessary to control, abate or stop the pollution; and,
 - adjust, repair or alter any works to the extent reasonably necessary to control, abate or stop the pollution.
 - inform / report to the SDM/specified officer of the actions taken (when, what, how, etc.)
3. If any sort of clean-up should be required of the person, **consult with the Land Remediation program**. EMA Sections 43(2)(c) and 48(6) require a director to perform a site assessment and submit information to the contaminated sites registry if a Pollution Abatement Order includes any remediation requirements.
4. Be reasonable in setting the requirements. Consider the:
 - harmfulness of the substance;
 - extent of the harm that is occurring;
 - human and natural values exposed to the harm; and
 - potential for the harm to escalate.
5. When setting compliance dates consider the:
 - urgency;
 - complexity and time span of required actions; and,

- a requirement to involve 3rd party contractors and how this effects a reasonable compliance date.
6. Adhere to section 83 of EMA when writing this type of order. (see EMA excerpt on the following page)

EMA excerpt

(current as of May 2016):

Pollution abatement orders

83 (1) If a director is satisfied on reasonable grounds that a substance is causing pollution, the director may order any of the following persons to do any of the things referred to in subsection (2):

- (a) a person who had possession, charge or control of the substance at the time it was introduced or escaped into the environment;
- (b) a person who owns or occupies the land on which the substance is located or on which the substance was located immediately before it was introduced into the environment;
- (c) a person who caused or authorized the pollution.

(2) An order under subsection (1) must be served on the person to whom it applies and may require that person, at his or her own expense, to do one or more of the following:

- (a) provide to the director information that the director requests relating to the pollution;
- (b) undertake investigations, tests, surveys and any other action the director considers necessary to determine the extent and effects of the pollution and to report the results to the director;
- (c) acquire, construct or carry out any works or measures that are reasonably necessary to control, abate or stop the pollution;
- (d) adjust, repair or alter any works to the extent reasonably necessary to control, abate or stop the pollution;
- (e) abate the pollution;
- (f) carry out remediation in accordance with any criteria established by the director.*

(3) An order under subsection (1) may authorize any persons designated by the director to enter land for the purpose of controlling, abating or stopping the pollution or to carry out remediation.

(4) A director may amend or cancel an order made under this section.

(5) The powers given by this section may be exercised even though the introduction of the substance into the environment is not prohibited under this Act or is authorized under this Act.

(6) For the purposes of this section, "**person**" does not include a municipality.

* A director must adhere to sections 43(2)(c) and 48(6) of EMA when exercising 83(2)(f) authority.

Pollution Abatement Order (s 83) – Template



[Method of delivery]

[Date SDM signed Order]

AMS File: [number]

[Name(s) and mailing address(es) of person(s) ordered]

Attention: [correspondence contact]

Pollution Abatement Order - template

This Order is being issued under Section 83 of the *Environmental Management Act*, SBC 2003, c. 53. I am satisfied on reasonable grounds that pollution is being caused by [substance] from [site or facility] located at [address] in [town], British Columbia. Specifically, the [site or facility] is located on the described land parcel:

[Lot__], [Plan__], [Section__], [Township__], [_____] Land District] (the “Land”)

Grounds For Issuance

I am satisfied that [name] is a person who

- had possession, charge or control of the substance at the time it was introduced or escaped into the environment;
- owns or occupies the land on which the substance is located or on which the substance was located immediately before it was introduced into the environment; or,
- caused or authorized the pollution.

[Only include if multiple persons are being named in the Order.]

I am also satisfied that [person’s name (the “Parties”)] is a person who

- had possession, charge or control of the substance at the time it was introduced or escaped into the environment;
- owns or occupies the land on which the substance is located or on which the substance was located immediately before it was introduced into the environment; or,
- caused or authorized the pollution.

The specific substance being introduced into the environment is [_____]
_____]

The usefulness of the environment has been substantially altered or impaired due to the presence of [_____]

On [date], at [location where issue/problem occurred] Officer [name of EPO conducting inspection] observed the substance [going from somewhere to somewhere]. Samples of the substance were taken by Officer [_____] at [location of each sample] and lab tests of those samples produced the following results:

- [data result] - which is [greater/less] than [environment, human health and safety standards for air/water/soil quality] ;
- [data result] - which is [greater/less] than [environment, human health and safety standards for air/water/soil quality] ;

Based on this information, I am satisfied on reasonable grounds that the substance is causing pollution.

ORDER

Pursuant to Section 83 of the *Environmental Management Act*, [person(s) named in the Order] is/are hereby ordered to comply with the required actions listed in the table below and to provide information to the director indicating the completion of each action.

Item	Required Action	Required by midnight on:
1		
2		
3		

[Only include when imposing a requirement to retain the services of a Qualified Professional]

For the purposes of this Order, the following definition applies:

"Qualified Professional" means an applied scientist or technologist specializing in a particular applied science or technology, including agrology, biology, chemistry, engineering, geology or hydrogeology, who (a) is registered in British Columbia with the professional organization responsible for his or her area of expertise, acting under that professional association's code of ethics and subject to disciplinary action by that association, and (b) through suitable education, experience, accreditation and knowledge, may be reasonably relied on to provide advice within his or her area of expertise as it relates to this order, or (c) is approved by the director.

DUTY TO COMPLY

The requirements above must be completed on or before the associated "Required By" date. Failure to comply with the requirements of this order is a contravention of the *Environmental Management Act* [SBC 2003, c.53] and may result in legal action. I direct your attention to Section 120(10) of the *Environmental Management Act*, which reads:

"(10) A person who contravenes an order...that is given, made or imposed under this Act by a ...director...commits an offence and is liable on conviction to a fine not exceeding \$300 000 or imprisonment for not more than 6 months, or both."

Failure to comply with the requirements of this order may also result in an administrative penalty under the Administrative Penalties Regulation (*Environmental Management Act*) [B.C. Reg 133/2014] (Regulation). I direct your attention to Section 12(4) of the Regulation, which reads:

"(4) A person who fails to comply with an order under the [Environmental Management] Act is liable to an administrative penalty not exceeding \$40 000."

RIGHT TO APPEAL

This decision may be appealed to the Environmental Appeal Board in accordance with Part 8 of the *Environmental Management Act*. An appeal must be delivered within 30 days from the date notice of this order is given. For further information, please contact the Environmental Appeal Board at (250) 387-3464.

NOTIFICATION OF PUBLICATION

The Party is notified that the Province intends to publish on the Ministry of Environment website the entirety of any Regulatory Document provided that:

- a) The Province will provide written notice to the party of its intent to publish the Regulatory Documents at least [14] days prior to publication,
- b) The Province will not publish any information what could not, if it were subject to a request under section 5 FOIPPA, be disclosed under the Freedom of Information and Protection of Privacy Act, R.S.B.C. 1996, c. 165 as amended from time to time.

This order will appear in the Ministry of Environment's [Quarterly Environmental Enforcement Summary](#) and [Environmental Violations Database](#).

MINISTRY CONTACT

If you have any questions, please contact the undersigned at [phone and email] or Environmental Protection Officer, [name], at [phone and email]

From,

[Signature of SDM]

[Name of SDM]

[Director or Director's Delegate] under the *Environmental Management Act*

Attachments (Optional):

CC recipients:

Pollution Abatement Order (s 83) – Example



Registered Mail
Date: May 1, 2016

AMS File: 12345

Forest Feast Mushrooms Ltd.
6500 11th Avenue
Abbotsford, BC
V4X 2E8

Paul Yution
777 Water Street
Langley, BC
V7K 9T8

Attention: Paul Yution, owner of Forest Feast Mushrooms Ltd.

Pollution Abatement Order - example

This Order is being issued under Section 83 of the *Environmental Management Act*, SBC 2003, c, 53. I am satisfied on reasonable grounds that pollution is being caused by the discharge of effluent from a mushroom composting facility located at 6500 11th Avenue in Abbotsford, British Columbia, to a ditch which is connected to Forest Creek. The mushroom composting facility is specifically located on the described land parcel:

Lot 1, Plan NWP9999, Section 2, Township 3, New Westminster Land District (the "Land")

GROUND FOR ISSUANCE

I am satisfied that:

- Forest Feast Mushrooms Ltd. and Paul Yution had possession of the substance that caused pollution on the Land at the time it was introduced into the environment; and
- Paul Yution owns the Land on which the substance was located immediately before it was introduced into the environment.

The effluent from the mushroom composting operation located on the Land contained high concentrations of fecal coliform, *E. coli* bacteria, and Ammonia Nitrogen. The presence of this micro-organism, bacteria and chemical compound in the concentrations shown by the lab results at the locations that were sampled by Officer Stephen Supersize on April 1st, 2016 caused pollution.

The effluent originated from the main storage lagoon on the Land. On April 1st, the effluent was observed by Officer Stephen Supersize to be discharging directly from the main storage lagoon on the Land into a water-filled ditch. 50 meters away from the effluent's entry point into the ditch, Officer Supersize observed that the water-filled ditch connected with and flowed into Forest Creek.

The usefulness of the environment has been substantially altered or impaired due to the presence of significantly high quantities of fecal coliforms and E.Coli and very high concentrations of Ammonia Nitrogen in the process water introduced into the environment in the course of the Party's mushroom composting operation. The ditch into which the discharge is occurring connects to Forest Creek and the presence of these substances is causing the surface water in the adjacent ditch, and potentially in Forest Creek, to significantly exceed BC Water Quality Guidelines.

Specifically, the discharge observed going directly into the ditch which connects to Forest Creek was tested and produced the following results:

- fecal coliform result of 240,000 cfu/100mL - which is 1200 times the BC Water Quality Guidelines for the protection of livestock watering, irrigated crops eaten raw and primary contact recreation;
- E.Coli result of 220,000 cfu/100mL – which is more than 2800 times the BC Water Quality Guideline for the protection of irrigated crops eaten raw and primary contact recreation; and
- Ammonia Nitrogen result of 36.5 mg/L - which exceeds the maximum acute ammonia guidelines for the protection of aquatic life by about 2 times the BC Water Quality guideline. The ammonia levels measured are acutely toxic to aquatic life.

ORDER

Pursuant to Section 83 of the *Environmental Management Act* [SBC 2003] Chapter 53, Forest Feast Mushrooms Ltd. and Paul Yution are hereby ordered to comply with the required actions listed in the table below and to provide information to the director indicating the completion of each action.

Item	Required Action	Required by midnight on:
1	Stop Discharging Waste: Immediately upon receipt of this order cease all effluent discharge(s) to ditch(es) with connectivity to Forest Creek or any other watercourse.	May 1, 2016
2	Stop Work: Immediately upon receipt of this order cease all mushroom composting operations. Shutdown of operations must be done safely and in coordination with WorkSafe BC requirements.	May 1, 2016
3	Hire Qualified Professional (soil): By May 31, 2016, retain a suitable Qualified Professional to develop a plan to remediate all contaminated soil in the ditch	May 31, 2016

	leading to Forest Creek.	
4	Hire Qualified Professional (water): By June 7, 2016, retain a suitable Qualified Professional to develop a monitoring plan to assess short term and long term impacts from the discharge to the ditch.	June 7, 2016
5	Submit Plan For Approval (soil): The remediation plan must be submitted to the director for approval by June 30, 2016. The plan must be to the satisfaction of the director.	June 30, 2016
6	Submit Plan For Approval (water): The monitoring plan must be submitted to the director by July 5, 2016. The long term monitoring plan must include, at a minimum, surface water data for the following parameters: dissolved oxygen, E.Coli, fecal coliform, nitrates and phosphate.	July 5, 2016
7	Implement Approved Plan (soil): The plan must be implemented on or before July 31, 2016.	July 31, 2016
8	Implement Approved Plan (water): The plan must be implemented on or before July 31, 2016.	July 31, 2016
9	Monitor Water Quality: Monitor surface water for the following parameters: dissolved oxygen, E.Coli, fecal coliform, nitrates and phosphate.	July 31, 2016
10	Remediate Soil: All contaminated soil must be removed or remediated by September 6, 2016.	Sept 6, 2016
11	Submit Compliance Reports And Publish Them Online: Submit a compliance report on the requirements imposed by this Order to the director by the 15 th of each month for a term beginning on June 15, 2016 including and ending on December 15, 2016. Each compliance report must be posted online on the home page of Forest Feast Mushrooms Ltd.'s website.	June 15, 2016 And, then monthly thru Dec 15, 2016

For the purposes of this Order, the following definition applies:

"Qualified Professional" means an applied scientist or technologist specializing in a particular applied science or technology, including agrology, biology, chemistry, engineering, geology or hydrogeology, who (a) is registered in British Columbia with the professional organization responsible for his or her area of expertise, acting under that professional association's code of ethics and subject to disciplinary action by that association, and (b) through suitable education, experience, accreditation and knowledge, may be reasonably relied on to provide advice within his or her area of expertise as it relates to this order.

DUTY TO COMPLY

The requirements above must be completed on or before the associated "Required By" date. Failure to comply with the requirements of this order is a contravention of the *Environmental Management Act* [SBC 2003, c.53] and may result in legal action. I direct your attention to Section 120(10) of the *Environmental Management Act*, which reads:

"(10) A person who contravenes an order...that is given, made or imposed under this Act by a ...director...commits an offence and is liable on conviction to a fine not exceeding \$300 000 or imprisonment for not more than 6 months, or both."

Failure to comply with the requirements of this order may also result in an administrative penalty under the Administrative Penalties Regulation (*Environmental Management Act*) [B.C. Reg. 133/2014] (Regulation). I direct your attention to Section 12(4) of the Regulation, which reads:

“(4) A person who fails to comply with an order under the [Environmental Management] Act is liable to an administrative penalty not exceeding \$40 000.”

RIGHT TO APPEAL

This decision may be appealed to the Environmental Appeal Board in accordance with Part 8 of the *Environmental Management Act*. An appeal must be delivered within 30 days from the date notice of this order is given. For further information, please contact the Environmental Appeal Board at (250) 387-3464.

NOTIFICATION OF PUBLICATION

The Party is notified that the Province intends to publish on the Ministry of Environment website the entirety of any Regulatory Document provided that:

- a) The Province will provide written notice to the party of its intent to publish the Regulatory Documents at least [14] days prior to publication,
- b) The Province will not publish any information what could not, if it were subject to a request under section 5 FOIPPA, be disclosed under the Freedom of Information and Protection of Privacy Act, R.S.B.C. 1996, c. 165 as amended from time to time.

This order will appear in the Ministry of Environment’s [Quarterly Environmental Enforcement Summary](#) and [Environmental Violations Database](#).

MINISTRY CONTACT

If you have any questions, please call the undersigned at (250) 666-9999 or Maxine.FairMaven@gov.bc.ca or Environmental Protection Officer, Biz Larchibald, at (250) 444-8888 or Biz.Larchibald@gov.bc.ca.

From,

Maxine Fair-Maven
Director, Environmental Management Act

Cc: Land Remediation Program, Ministry of Environment
Conservation Officer Service, Ministry of Environment
City of Abbotsford
Worksafe BC
Environment Canada

2.3 Issue and Serve the Order

To issue an order, a draft is provided for comment (whenever possible), a statutory power of decision is exercised, the order is signed and then served on the person. The following section provides guidance on the process for issuing and serving an order.

2.3.1 Why is a draft order provided for comment?

A draft version of the order is provided for comment, as long as there isn't an emergency, because it provides the person named in the order with an opportunity to be heard. From an administrative law context this means that the person is provided with a chance to consider the facts upon which the decision will be based and a chance to address any perceived inaccuracies. This can be accomplished through a conversation, phone call, email or letter.

For this "opportunity to be heard" to be effective and meaningful, the following must take place:

- i) the affected individual must be informed that a decision is to be made;
- ii) the opportunity to be heard must be given in adequate time and in sufficient detail to enable the individual to respond;
- iii) the individual must be aware of the requirements being ordered and the evidence for making the order; i.e. information to be considered by the decision-maker must be made available to those affected prior to the decision being made; no one should be taken by surprise; and,
- iv) the individual must be given an opportunity to present additional or contradicting evidence to the decision-maker.

Providing a draft for comment must not take priority over responding to emergency or exigent circumstances. Timeliness is often critical, especially for Pollution Abatement Orders.

2.3.2 How is a draft order provided for comment?

Typically, the SDM shares a draft version of the order by email and allows a reasonable amount of time for him/her to submit a response. In some circumstances, it might be appropriate to discuss the order's requirements over the phone or in-person. The less significant the financial implications of an order's requirements will be for the ordered person, the fewer procedural precautions are needed.

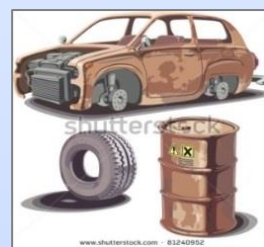
- If additional information is submitted by the person, the SDM must consider it to the extent that it is relevant to the statutory decision being made. Of particular relevance is information about the requirements, the names of responsible persons and compliance date(s) which are being set in the order.
- If the person does not respond or disagrees with the order, this alone is not grounds for not issuing the order. If content and clarification is needed, this can be accomplished with a telephone call or email correspondence.



The fictional story (below) provides an example of how a Statutory Decision Maker (SDM) might provide an opportunity to be heard to a person before issuing an order.

Example of Providing a Draft for Comment (Opportunity to be Heard)

On August 1st, 2016 Environmental Protection Officer, Gary Green, receives a complaint about a neighbour that appears to be conducting a business that recycles derelict vehicles. Officer Green notes the address and location and checks the Authorization Management System and the BC Land Title Survey Office to see if the business or property owner is a registered vehicle recycler. The property owner is not registered as a vehicle recycler and is not a member of a recycling association with a plan. Officer Green checks to see if any recent inspections under EMA have been conducted on the property. Last year, the same property owner received a warning letter about the Vehicle Dismantling and Recycling Industry Environmental Planning Regulation (the Regulation) requirements to register and have a plan.



Officer Green then uses his inspection powers to verify compliance with the Regulation and with EMA. As part of his inspection routine, he samples the soil and surface water in several locations on the property. He also takes photos of 12 vehicles in a ditch at the back of the property in various stages of being dismantled which are leaking fluids. After the sample results come back from the lab, he recommends that a Pollution Abatement Order be issued by a SDM (Statutory Decision Maker) under Section 83 because it will compel the property owner to address the pollution that is occurring. Officer Green enters the appropriate information into AMS.

The SDM, Maxine Fair-Maven, reviews the information in AMS and the draft order. She begins her process of providing an opportunity to be heard by calling the property owner and informing him of her pending decision to issue a Pollution Abatement Order. She offers to send him a copy of the Pollution Abatement Order via email.

The property owner sends an email to Maxine so that she can send a reply with the draft order attached and with an invitation for the property owner to provide additional information that he would like her to consider. Maxine sets a deadline of *Sept 1st, 2016* for additional information to be received by email or delivery at the Ministry's regional office address.

Maxine saves her telephone conversation notes, emails, and all other correspondence between her and the property owner to demonstrate a fair hearing process befitting the circumstances and a reasonable timeline were both provided to the property owner. In other words, Maxine retains all proof that the property owner was provided with an opportunity to be heard.

Before the deadline, the property owner submits a letter stating that he is only dismantling a couple of friends' vehicles and that he isn't doing business as a vehicle recycler. Maxine considers the information in the letter and determines that; the Regulation's requirements still apply, there are reasonable grounds to believe pollution has occurred on the property, and the property owner is the appropriate person to name in the order.



Maxine uses AMS to issue the Pollution Abatement Order and then Officer Green serves it on the property owner via registered mail.

2.3.3 Checklist - Before Issuing an Order

Staff are encouraged to use this checklist to ensure the quality of **EMA** orders prior to issuing them.

CHECKLIST – BEFORE FOR ISSUING AN ORDER

The order:

- ☐ is being used for its defined purpose in EMA;
- ☐ sets reasonable requirements that can be verified and enforced;
- ☐ a draft was provided, for comment, to the person(s) named in the order (if appropriate);
- ☐ will be issued by someone with statutory authority; and,
- ☐ will be accompanied by communication bullets for supervisors and executive staff.

2.3.4 Making a Statutory Decision

The decision to issue an order is a statutory decision. Only staff with SDM authority may make a statutory decision. The process for making a statutory decision is described in the Environmental Protection Division's SDM Handbook and can be summarized as the following steps: gather relevant information, conduct a Ministry review of the decision package and provide an opportunity to be heard to the person, then make the decision by exercising SDM authority.

2.3.5 Serving an Order

Serving an order means to deliver it using a method that is reliable and provided for in the legislation. The date the order was served is recorded in AMS and in the e-Filing system. (Remember that the date at the top of the order is NOT the date that the order was served on the person. It's the date that the order was signed by the SDM.)

It is important to have a record of when the order was served because it establishes the **effective date** and:

- An order becomes legally binding when it is served. The date on which the order is served on the person is the date the order's requirements are in effect, unless a later date is specified in the order.
- If the person does not fully comply with the order, the effective date might establish the first day of non-compliance. This can be relied upon as evidence in an administrative penalty or an investigation.
- EMA has a 30 day time limit for the person to file for an appeal with the Environmental Appeal Board (EAB). The effective date establishes when that 30-day period begins. An appeal filed more than 30 days after the order's effective date is likely to be rejected by the EAB.

Under EMA, orders may be served by registered mail or by in-person delivery. An order must be served by someone able to verify that they served it and to whom it was served. An order served by registered mail is deemed to be served **14 days after deposit** with Canada Post or earlier.

2.3.6 Authority to Serve an Order by Registered Mail

The authority to serve an order by registered mail is found in Section 133 of EMA.

- 133 (1) Anything that under this Act must be served on a person, may be served by registered mail sent to the last known address of the person.
- (2) Any notice under this Act may be given by registered mail sent to the last known address of the person.
- (3) If a notice under this Act is sent by registered mail to the last known address of the person, the notice is deemed to be served on the person to whom it is addressed on the 14th day after deposit with Canada Post unless the person received actual service before that day.
- (4) This section does not apply to notices or documents of the appeal board.



2.3.7 How Are Orders Usually Served?

EMA orders are usually served by registered mail. As an alternate method, in-person delivery is also acceptable. The table below provides guidance on serving an order and when to use each method.

Registered Mail	Best When...	Do Not Use If...
<ol style="list-style-type: none"> 1. Do a B.C. business records search to ensure the order will be served on the correct person at the correct location. 2. Send an advance copy via email and notify the person that a signed hard copy of the order is being sent in the mail. 3. Fill out a Canada Post registered mail sticker, peel off one of the sticker's tracking numbers, stick it on the "Registered Mail Trace Sheet", write the address on the trace sheet, and peel off the rest of the registered mail sticker and place it on a large envelope addressed to the recipient. 4. Ensure the Ministry's address is in the top left corner of the envelope. 5. Put a signed hard copy of the order in and send the envelope and Registered Mail Trace Sheet through the government "house mail" service. 6. Scan the tracking record and save it in AMS and the electronic-filing system for managing records. 	It is best to use when personal service would be unsafe, impractical or resource intensive.	Do not use if there isn't a permanent address for the person, or if urgent action is required and there isn't time to wait for mail service delivery
In-Person Delivery	Best When...	Do Not Use If...
<ol style="list-style-type: none"> 1. Do a B.C. business records search to ensure the order will be served on the correct person at the correct location. 2. Deliver a signed hard copy of the order to the person named in order (or the occupant) and obtain a signature. Take photos and precise notes to capture details of how, when, where and to whom it was served. 3. Send a follow-up copy via email if an email address is available. 	It is best to use when requiring the person to take urgent action.	There is a safety risk for staff, or a high likelihood that the person will comply with the order.

2.3.8 How Do These Methods Compare?

Registered mail is usually more cost-effective, convenient and does not pose a risk to employee safety. In-person delivery is usually faster if the person serving it has the time and access to a vehicle; however, it does involve staff physically interacting with the person(s) named in the order.

2.4 Verify Compliance with the Order

Compliance with an order must be verified. This is done by conducting an inspection. The basic intent of an inspection is not to uncover a breach of a regulatory requirement; it is to confirm compliance with the requirement and thereby protect the environment and human health or safety. It is a subtle distinction, but one that guides how the activity is undertaken. Here are five steps to verify compliance with the order:



1. Plan the inspection. Plan to verify compliance with each requirement written in the order. Refer to the EPD Inspector Training Manual, if needed.
2. Schedule the inspection. Decide whether or not to give the person advanced notice of the inspection. For example:
 - *Providing advanced notice* might facilitate faster access to a high-risk facility. A company might have a policy that visitors must be accompanied by a safety escort for insurance purposes. Booking an appointment allows for a safety escort to be arranged by the company ahead of time.
 - *Not providing advanced notice* might result in a more accurate assessment of compliance status. The recipient of an order could have gambled that the Ministry would be too busy to follow-up with an inspection with the goal of avoiding the expenses necessary to comply with the order.
3. Carry out the inspection, on-site or in-office, as appropriate.
4. Create an inspection record the Natural Resource Inspection System (NRIS).
5. Send the appropriate correspondence to the person(s) named in the order. If each requirement in the order is complied with, provide the person with a *Notice of Compliance*. If compliance is not achieved with the ordered requirements, provide a copy of the inspection to ordered person and initiate an escalated enforcement action. Typically, an administrative penalty is issued for non-compliance with an order.
6. Update AMS records:
 - Add NRIS inspection record reference number
 - Change order status to show that the order requirements are no longer in effect



2.5 Enforce Compliance with the Order

If one or more requirements in the order are not complied with by the date specified in the order, appropriate enforcement action should be taken. The appropriate response is an administrative penalty or a referral for an investigation. If an investigation is undertaken the outcome will most likely be a referral back to the program area to issue an administrative penalty or a report to Crown Counsel recommending a court prosecution case. Advisories, warnings and tickets are not appropriate enforcement actions for responding to non-compliance with an order.

When Is an Administrative Penalty Appropriate?

An administrative penalty is appropriate when there is non-compliance with one or more requirements in the order. An administrative penalty is the most common response to non-compliance with an order. For example, failing to fully comply with all requirements in the order by the date that was specified would likely result in the issuance of an administrative penalty. It is up to the discretion of an SDM with administrative penalty powers to determine the amount of the penalty.

Failure to comply with any EMA order is a contravention of EMA's Administrative Penalty Regulation Section 12(4). This means that an administrative penalty can be issued to a person if (s)he does not comply with the order's requirements by the date specified in the order.

Administrative Penalty Regulation, Section 12 (4)

"A person who fails to comply with an order under the Act is liable to an administrative penalty not exceeding \$40,000."

When Is an Investigation Referral Appropriate?

An investigation referral is appropriate when staff responding to a non-compliance issue need information beyond that which a director or an Officer have the power to compel a person to provide under EMA. The Investigation Review Process is described in the [Compliance and Enforcement Policy and Procedure](#). A referral to the Conservation Officer Service for an investigation review is appropriate when:

- evidence needs to be gathered
- a witness needs to be interviewed
- a search warrant is needed to access information
- evidence needs to be seized from private property
- the same location or person is already the subject of an ongoing investigation
- the pollution issue is significant and might meet charge approval for a court prosecution

If a person does not comply with an order's requirements by the date specified in the order (s)he can be prosecuted in court. If convicted, (s)he might be subject to a fine, jail time or both.

Failure to comply with an order issued by a director is an offence under EMA Section 120 (10).

What Are the Maximum Court Penalties?

For non-compliance with an Information Order, Pollution Prevention Order or Pollution Abatement Order the maximum penalty is \$300,000 *and* 6 months in jail.

- 120 (10) A person who contravenes an **order** or requirement, other than an order under section 9 (3) [*hazardous waste storage and disposal*], that is given, made or imposed under this Act by a sewage control manager, a district director, **a director**, the minister or the appeal board commits an offence and is liable on conviction to a fine not exceeding \$300 000 or imprisonment for not more than 6 months, or both, but an order or requirement is not contravened unless it
- (a) was given in writing, and
 - (b) specified a reasonable period of time for compliance and that period has expired.

Time Limit for Prosecuting an Offence

EMA sets a 3 year time limit for the Ministry to respond to non-compliance with "laying an information for an offence". This means that charges must be laid within 3 years of the non-compliance activity or within 18 months of the Minister's knowledge about the non-compliance activity. Below is an excerpt from EMA.



- 124 (1) The time limit for laying an information for an offence under this Act is
- (a) 3 years after the date that the facts on which the information is based arose, or
 - (b) if the minister completes a certificate described in subsection (2), 18 months after the date that the facts on which the information is based first came to the knowledge of the minister.

2.6 Manage Records

Whenever an order is served on a person, it is the result of a number of actions by staff, the ordered person, and other supporting or involved individuals. As such, staff must manage the records associated with an order as one part of a “case” so that there is complete documentation.

What Is a Record?

The Government of B.C. defines records as any books, documents, maps, drawings, photographs, letters, vouchers, papers and any other thing on which information is recorded or stored by any means whether graphic, electronic, mechanical or otherwise. For orders, typical records include:

- notes;
- inspection records;
- exchanges with the ordered person;
- descriptions of actions taken by officers; and,
- a copy of the issued order;

Retention of records is a legal obligation for public agencies.

Why Keep a Record?

Records are kept to:

- a) meet the Ministry’s legal obligations;
- b) ensure a complete and accurate understanding of the issues, actions and outcomes
- c) support program management, including priority setting;
- d) ensure efficient and effective case management:
 - support escalating enforcement action if there is non-compliance with the order;
 - support change in case manager;
 - creation of a comprehensive compliance history on the use and results of orders.

Where Are Order Records Kept?

The Regional Operations Branch of EPD retains a record of each order after it is issued. These records are currently located in its e-filing system.



What Is the E-Filing System?

Staff can access records management policies and training materials on the website shown below.

<https://www.nrs.gov.bc.ca/env/environmental-protection-division/records-and-information-management-training>

ENVIRONMENT

EAO

NRS

AGRI

ENV

FLNR

MA

Organization, Business, Tools, Employee,

Records and Information Management Training

Wednesday, August 26th, 2015



Ministry of Environment Records and Information Management

Records and Information Management or R.I.M. is one of the most important duties for a public servant. The public relies on us to tell them the story, give them the facts, and show them the truth and we do this by keeping our letters, storing our data, and capturing images – our records. There is much to show, tell, see and do. Explore.

 <h4>General</h4> <p>Learn about mandatory records management policies and duties within the B.C. Government.</p>	 <h4>ROB LAN</h4> <p>Learn how your day-to-day work is connected to ROB LAN business records.</p>
 <h4>E-mail</h4> <p>E-mails are the new documents. Discover ways to help you manage your e-mails effectively.</p>	 <h4>"How To ..."</h4> <p>Don't know how to conduct a search in Outlook? Want to know how to save an e-mail to the LAN? We have what you need – fast!</p>
 <h4>Naming</h4> <p>Naming, tagging, and renaming subject lines, documents and those other gritty details that help create easily retrievable records.</p>	 <h4>Resources</h4> <p>The world is your oyster. Want to know more? We have some great suggestions on how to take your records management skills to the next level.</p>

Which Types of Records Are Stored in E-Filing?

Before Writing the Order		
Record Type	Transferred From	Comment
Inspection record	NRIS	All orders must be linked to an inspection record.
Information obtained <ul style="list-style-type: none"> • photos • video files • officer notes • correspondence (emails, scanned letters, etc.) with the person • all other inspection-related records 		When possible, list prior inspection records, and associated non-compliance advisories and warnings.
Advice from colleagues	MS Outlook	n/a
Writing and Issuing the Order		
Record Type	Transferred From	Comment
Legal review (optional)	AMS	n/a
Opportunity to be heard		Copy of the order provided to person
Response to opportunity to be heard		Email, notes of conversation, letters and other comments received from person
Issued order (with signature)		n/a
In-person delivery record		n/a
Canada Post registered mail delivery record		n/a
Officer notes (pdf, word docs)		May include EPO or CO confirmation notes on hand delivery service: location, date, time, and other relevant factors. May include notes of telephone follow-up confirmation of order receipt.

Service date and time		The date and time of service is important for taking potential follow-up actions (e.g. reasonable time to comply with requirements; 30 day period to Appeal; etc.)
After Issuing the Order		
Record Type	Transferred From	Comment
Inspection Record	NRIS	Requirements in the order cut and pasted into an Inspection Record, with compliance determinations for each.
Compliance Notice		Used when the inspection determines compliance with all requirements of the order.
Advisory / Warning		n/a
Letter of Compliance	AMS	n/a
Letter notifying the person that the regulatory requirements of the order are no longer in effect		n/a
Other correspondence related to the order		n/a
Information supplied by the person as required by the order		E.g. Photo evidence of compliance; required reports; QP submissions; etc.

Chapter 3: GUIDANCE FOR AMENDING AN ORDER

Amending an order means making a change to some aspect of the order after it has been issued. There a variety of reasons for making a change to an order. For example, if new information is acquired, and the SDM decides to:

- add or substitute the name of a person who is responsible complying with the order
- clarify a requirement set by the order
- amend a requirement set by the order
- add a requirement
- set a different compliance date



Tips for amending an order:

- When adding or substituting the name of a person serve the amended order on all persons named in the amended order.
- When amending the requirements in an order, be clear on what is required and what is no longer required. In the amended order, include all of the requirements that are being imposed by way of an order.
- When an amendment requires more stringent or onerous action by the ordered person, a second opportunity to be heard should be provided.
- When an amendment is made at the request of the ordered person or the amendment is a relaxation of the order's requirements, it is not necessary to provide an opportunity to be heard. For example, if the person requests a different compliance date and the SDM decides to amend the order to accommodate this request, there is no reason to provide another opportunity to be heard for the order's requirements prior to issuing the amended order.

3.1 Duty to Consult with First Nations when Amending an Order

The government has a legal duty to consult and, where required, accommodate First Nations when it proposes a decision or activity that has the potential to adversely affect their claimed or proven aboriginal rights (including title) or treaty rights ("Aboriginal Interests"). For example, the duty to consult would likely be triggered when the government considers whether to approve a waste discharge authorization for a mine located within the traditional territory of a First Nation.

Consideration should also be given as to whether the duty to consult is triggered in the context of amending Pollution Prevention Orders and Pollution Abatement Orders. These types of orders are intended to prevent pollution from occurring, or to control, abate or stop pollution, which would generally be unlikely to have adverse impacts on First Nations' Aboriginal Interests; however, there may be terms under the order that could trigger the duty. For example, a Pollution Prevention Order may require the construction of works in a sensitive area or place with specific value to First Nations. As another example, if a Pollution Abatement Order requires remediation work, the clean-up activities required and the remediation standards for soil and water quality

might affect First Nations' Aboriginal Interests and trigger the duty to consult. When in doubt, legal guidance may be sought from the Ministry of Justice.

Furthermore, the timing of an amended order should be given consideration. The duty to consult is required to be satisfied before the relevant decision is made; however, in the case of an environmental emergency, sometimes there is no time for consultation to occur because it is necessary to act immediately to protect the environment. In such cases, if a decision to issue an amended order is made without prior consultation, then staff should plan on engaging First Nations in relation to any requirements of the order that may trigger the duty to consult as soon as practical after the decision, and be open to amending the order again, if necessary, as a result of the consultation.

For more information about the duty to consult please refer to the [Updated Procedures for Meeting Legal Obligations When Consulting First Nations](#). The document describes the Province's approach to consulting and accommodating First Nations where a proposed decision or activity may affect claimed or proven aboriginal rights (including title) or treaty rights. The primary web site for information on the Consultation Process and Agreements is http://cguide.nrs.gov.bc.ca/docs/html_files/index.html.

Staff are also required to follow all existing consultation and accommodation procedures agreed to by the provincial government and individual First Nations. These procedures may be found in agreements such as Strategic Engagement Agreements, Reconciliation Agreements, Interim Treaty Agreements, Final Agreements, and Economic and Community Development Agreements. They can be accessed on the provincial government's [First Nations Negotiations](#) webpage.



3.2 Public Reporting of an Amended Order

Decisions about publicly reporting amended and cancelled orders are made on a case-by-case basis. These decisions rely on the advice of the support staff involved in managing the case file for the order, the SDM who amended or cancelled the order, and the best practices for the Environmental Violations Database. The decision to publicly report an amended or cancelled order is led by the Ministry of Environment's Compliance Policy and Planning Section.

Chapter 4: GUIDANCE FOR CANCELLING AN ORDER

Cancelling an order refers to revoking, rescinding, terminating, or otherwise nullifying the obligation of the person to comply with the order. Every order is cancelled at some point. This is because either the order solved the problem that it was issued to solve, the problem was solved through other means, or the order couldn't solve the problem and another tool is going to be used instead.

Typically an order is cancelled after compliance with the requirements has been achieved, but it might be cancelled at the discretion of a SDM. For example:

- Sometimes the requirements in an order are changed significantly. If it's necessary to impose an amended requirement that creates a significantly higher burden upon the person, the SDM should cancel the original order, draft a new order containing all the requirements, provide the ordered person with a new opportunity to be heard, make a new statutory decision and issue a new order.
- Sometimes new information comes to light and it indicates that a different type of order should be used. If a different type of order is needed, cancel the original order. For example, if an initial inspection indicated that pollution was likely to occur and the Ministry issued a Pollution Prevention Order, but, a week later, new information indicated that pollution was already occurring. First, the Pollution Prevention Order should be cancelled. Then, a Pollution Abatement Order should be issued to address the pollution issues.

When an order is cancelled, the SDM or his/her support staff must update AMS, file a record of the order's cancellation, and send a letter to formally notify the person who was named in the order that the order's requirements are no longer in effect. In summary, the procedure to cancel an order is:

- ✓ Cancel the order in AMS
- ✓ File the AMS confirmation of the order's cancellation
- ✓ Notify the person that the order is cancelled



APPENDICES

Appendix 1 – Acronyms and Definitions

Acronyms

AMS	- Authorization Management System
COORS	- Conservation Officer Offence Reporting System
NRIS	- Natural Resource Inspection System
EMA	- <i>Environmental Management Act</i>
ENV	- Ministry of Environment
EPD	- Environmental Protection Division
EVD	- Environmental Violations Database (Ministry-wide public reporting initiative)
MPAO	- Municipal Pollution Abatement Order issued under EMA Section 84
MPPO	- Municipal Pollution Prevention Order issued under EMA Section 82
NCDM	- Non-Compliance Decision Matrix (<i>Compliance and Enforcement Policy and Procedure</i>)
OTBH	- Opportunity To Be Heard
PAO	- Pollution Abatement Order issued under EMA Section 83
PPO	- Pollution Prevention Order issued under EMA Section 81

Definitions

Designate (verb) – to name someone as belonging to a class of persons. For example, the Regional Operations Branch Executive Director is designated as a director under *EMA*.

Delegate (verb) – granting a person some or all of the powers the grantor has. For example, the Regional Operations Branch Regional Directors and Section Heads are delegated specific director authorities.

Municipality – includes, (except for *EMA*, Part 4)

- (a) a regional district,
- (b) an improvement district that has as an object
 - (i) the disposal of sewage or refuse, or
 - (ii) the provision of a system for the disposal of sewage or refuse or both, and
- (c) the Greater Vancouver Sewerage and Drainage District.

For the purpose of issuing an order, “municipality” includes any legal entity that derives its authority and function from the *Local Government Act* or the *Community Charter*, such as a city, town, regional district, or an improvement district. When issuing an order, staff are advised to be inclusive with their interpretation of “municipality”. If the party to which an order is being issued is perceived to be a lower level of government, use the Municipal

Pollution Prevention or Municipal Pollution Abatement Orders. The authority to order municipalities is held by the Minister, and not delegated to the director. Seek legal advice for uncertain cases.

Person – As defined in the *Interpretation Act*, “Person includes a corporation, partnership or party, and the personal or other legal representatives of a person to whom the context can apply according to law.”

Registered Mail – a method of mail delivery provided by Canada Post for which confirmation of delivery to a named person is available.

Regulatory Requirement – a legal requirement of a statute, regulation, authorization (E.g. permit, approval, order, waste management plan, and operational certificate).

Statutory Decision Maker (SDM) – An SDM is a person with statutory authority to exercise a power of decision. For the purposes of this handbook, the SDM for orders is anyone designated or delegated director authority for IOs, PPOs or PAOs.

Links found in this document

- BC Land Title Survey <https://ltsa.ca/>
- BC Corporate Registry Services www.bconline.gov.bc.ca/main.html
- Compliance and Enforcement Policy and Procedures (ENV)
https://www.nrs.gov.bc.ca/env/files/env/media/esspd/strat_policy/C%26E%20Policy%20and%20Procedure%202013_2.pdf
- Environmental Enforcement Reporting (ENV)
<http://www2.gov.bc.ca/gov/content/environment/research-monitoring-reporting/reporting/environmental-enforcement-reporting>
- First Nations Consultation Process (B.C.)
http://cguide.nrs.gov.bc.ca/docs/html_files/index.html
- Records Management (Environmental Protection Division)
<https://www.nrs.gov.bc.ca/env/environmental-protection-division/records-and-information-management-training>

Appendix 2 – Pick-List of Requirements

When referring to the examples below, SDM's should ensure that the requirements imposed by the order are limited to what is appropriate for their case file. SDM's should also apply a *compliance verification* and an *enforcement* lens to the wording to ensure that compliance with the order can be managed effectively.

Requirement Types and Examples	Available For:		
	Info Order	PP Order	PA Order
Information Requirements			
Submit to the director by [specified date] an inventory of: <ul style="list-style-type: none"> • [specified substance]; and, • [specified substance]. 	✓	✓	✓
Submit to the director by [specified date] an Environmental Impact Study that evaluates the impacts of <ul style="list-style-type: none"> • [specified action]; and • [specified action]. 	✓	✓	✓
Submit to the director: <ul style="list-style-type: none"> • annual reports; • email records; and, • manifest records. 	✓	✓	✓
Qualified Professional Requirements			
Retain a Qualified Professional to develop and guide implementation of a [specified plan type] to [control or eliminate] [specified substance] runoff originating from the [specified location].	X	✓	✓
Provide the name of the Qualified Professional to the director by [specified date].	✓	✓	✓
Miscellaneous Requirements			
[Specified Materials] must not be stored on the subject property longer than [specified period of time].	X	✓	✓
[Statement that all persons named in the order are jointly and separately responsible for complying with the order.]	✓	✓	✓

Appendix 3 – EMA Powers (For Ordering A Person To Do An Action)

EMA Section		Section Title	Power
1	19	Variance Orders	Minister authority to provide temporary relief from an order, permit approval or WMP.
2	24	Waste management plans	Minister may require the preparation of a WMP
3	24	Waste management plans	Minister may, by order, amend or cancel a WMP
4	29	Sewage control areas	Sewage control manager may order a person
5	31	Control of air contaminants in Greater Vancouver	District director may order a person
6	40(8)	Site profiles	Director may order a person to provide site profile
7	41(1)	Site investigations	Director may order a preliminary or detailed site investigation
8	48(1)	Remediation Orders	Director may issue a remediation order
9	49(4)	Allocation panel	Director may require a person to seek the opinion of a panel
10	52(1)	Public consultation and review	Director may order a person to provide public consultation or a public review of remediation activities
11	54(3)	Independent remediation procedures	Director may impose requirements at any time during independent remediation
12	55(4)	Contaminated soil relocation	Director may require information pertaining to the source site, receiving site, etc... and security (\$)... may include property
13	59(1)	Cost recovery if minister carries out remediation	Director may recover all or a portion of the cost
14	77	Information Order	Director may order a person to provide information to determine reasonable grounds for a Pollution Prevention or Abatement Order
15	78	Environmental impact assessment	Minister may require a person to provide an impact assessment
16	79	Spill prevention and reporting	Prepare a plan in accordance with Minister's direction
17	79	Spill prevention and reporting	Minister may order a contingency plan be tested
18	80 (4)	Spill response actions	Director may require a person to pay
19	81	Pollution Prevention Order	Director may order a person to prevent pollution
20	82	Municipal Pollution Prevention Order	Minister may order a municipality to prevent pollution
21	83	Pollution Abatement Order	Director may order a person to address pollution
22	84	Municipal Pollution Abatement Order	Minister may order a municipality to address pollution
23	85	Environmental Protection Order	Lieutenant Governor in Council and Minister authority to declare environmental risk and require actions.
24	86	Environmental management plan	Lieutenant Governor in Council may order Minister to prepare an Emergency Management Plan
25	87 (3)	Environmental emergency measures	Minister may order any person for purposes of dealing with an emergency.
26	89	Area based management plan	Minister may order plan
27	109(4)(d)	Inspections	Officer may require anything be operated, used or set in motion under conditions specified by the officer.
28	109(6)	Inspections	Officer may require person a person to produce material and information for examination.
29	111	Inspection of vehicles	Officer may order a person to stop vehicle, provide information, open compartments, and deal with hazardous waste
30	112(1)(a)	Seizure and Prevention Order	Inspector may order person to do anything necessary to stop contravention or prevent another contravention
31	114	Restraining Order	Court authority to restrain specific activities defined in S114.
32	127	Additional Sentencing Orders	Court authority to sentence convicted persons.