New Environmental Code to Take Effect in Saskatchewan



On Nov. 3, 2014, the Environment Minister in Saskatchewan announced that the province was adopting a new environmental code, which is the first of its kind in Canada and the cornerstone of the province's new results-based approach to environmental regulation. The code consolidates and replaces the code chapters established under *The Environmental Management and Protection Act, 2010* and *The Forest Resource Management Act*. (It doesn't, however, replace the existing environmental assessment process required by *The Environmental Assessment Act*.) Here's a look at Saskatchewan's new Environmental Code (Code).

THE CODE

When It Takes Effect: The Code will take effect in stages to allow affected industries to prepare for the change. The chapters dealing with forest management take effect Jan. 5, 2015, while the remaining chapters will take effect on June 1, 2015.

What It Covers: The Code has a preface and five divisions that cover:

- General Environmental Management and Protection;
- Land Management and Protection;
- Water Management and Protection;
- Natural Resource Management and Environmental Protection; and

- Air Management and Protection.

Each division is further divided into chapters on specific activities, such as wastewater collection and industrial air emissions, which impose duties on persons engaged in those activities. New or existing activities not covered in the Code will continue to be regulated by existing regulations and processes.

Compliance Options: To comply with the duties imposed by the Code chapters, persons will have two options:

Acceptable solutions. The Code chapters establish an agreed-upon acceptable level of risk but don't detail all possible compliance options. Acceptable solutions provide a pre-defined process that regulated companies may follow. These solutions represent the *minimum level* of performance required by regulated companies to meet the acceptable risk. Thus, compliance with acceptable solutions is deemed to satisfy the results-based objectives contained in that chapter.

Alternative solutions. When a person carries out an activity that's regulated by the Code that doesn't follow the acceptable solution or for which an acceptable solution isn't provided, it must propose an 'alternative solution"that is, a plan developed by a proponent, which is designed to meet the results-based objectives of a chapter and is signed off by a 'qualified person.' In general, the proposed alternative solution should achieve outcomes equal to or better than those specified in the acceptable solution. The Minister must accept all proposed alternative solutions before the company carries out the activity. The Minister may accept, accept with conditions or reject the alternative solution.

Related Regulations: The supporting regulations that make up the first edition of the Code were introduced upon proclamation of *The Environmental Management and Protection Act 2010* and *The Forest Resources Management Amendment Act*

2010.

Enforcement Tools: The Code gives the government the following enforcement options for dealing with a regulated entity that isn't in compliance:

- Review whether additional obligations should be imposed on the regulated entity;
- Require the regulated entity to provide the ministry with the results of any compliance evaluation conducted by it, such as evaluation from environmental management systems;
- Conduct inspections or review submissions from responses to inspection reports;
- Issue notices of violations, which include appropriate remedial action plan and further information on the consequences of continued non-compliance;
- Conduct an audit to determine how well the obligations imposed on the regulated entity have been met or why the terms and conditions haven't been met;
- Conduct an investigation, including enter property, review records, seize property, etc.;
- Cancel, amend, alter or suspend an approval, permit or alternative solution;
- Issue an order when the Minister believes a person is carrying out an activity that may cause significant harm;
- Impose an administrative penalty;
- Obtain a court order requiring compliance; and
- Initiate prosecution for breach of the Act, regulations or Code.

ANALYSIS

The Code's preface explains that its purpose is to enhance environmental protection and resource management by providing regulatory clarity while fostering innovation, economic growth and social benefits. It does so by giving regulated entities

options on how to achieve the expected environmental outcomes or results. To help regulated entities understand the Code and any new obligations, the ministry has also released a Quick Reference Guide and a Q&A document.