

Policy on Oversight of the Compliance Function			
Policy Number:	RPRA-Board-GRSAC-012		
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Responsible Executive:	General Counsel and Chief of Strategic Initiatives	Date Last Revised:	September 18, 2023

Oversight of the Compliance Function: Roles and Responsibilities

Purpose:

The purpose of this policy is to set out the principles governing the roles and responsibilities of board members, the Registrar and other compliance staff, and the CEO with respect to compliance and enforcement. The first part of this policy provides an overview of the legislative and legal context for the division of responsibilities between the board, the Registrar and other compliance and enforcement staff, and the CEO. The second part sets out the principles that govern the relationship between the board, the CEO, and the Registrar and other compliance staff on matters relating to the compliance and enforcement function (referred to in the rest of this document as the “compliance function”).

This policy focuses on how the compliance function is overseen by the board and the CEO in a way that protects the independence of the compliance team’s statutory decision-making authority. The board also has statutory decision-making authority—for example to approve wind up plans, appoint an administrator, or set fees. Oversight of the board’s decision-making is performed by the Minister of the Environment, Conservation and Parks through a number of accountability tools in RPRA’s governing legislation and its operating agreement with the Minister, and is not addressed in this policy.

Application:

This policy applies to everyone in the organization: board members, officers, CEO, Registrar, and compliance staff.

Policy:

Introduction

RPRA’s role includes being a regulator with responsibility for enforcing provincial laws under the RRCEA and the WDTA. RPRA’s role as a regulator means that, in addition to standard governance principles that apply to the board’s supervision of RPRA’s affairs, there are special considerations that apply to the board’s oversight of RPRA’s compliance and enforcement activities. These considerations arise out of RPRA’s governing statutes, the Operating Agreement, and fundamental common law and constitutional law principles of procedural fairness.

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The statutory context

[The Resource Recovery and Circular Economy Act, 2016](#) sets out the powers and duties of RPRA, RPRA's board, and the Registrar, Deputy Registrar, and other compliance officers with respect to compliance and enforcement under the Act.

RPRA	Board	Registrar and other compliance staff
RPRA shall exercise powers and perform duties in relation to compliance with and enforcement of the	RPRA is composed of the members of its board of directors (s. 23(1))	The Registrar has the power to appoint Deputy Registrars and Inspectors (ss. 46 and 47)
<p>RRCEA (s. 77)</p> <p>RPRA shall appoint a Registrar who shall perform the duties assigned to him or her under this Act or any other Act and by RPRA (s. 45)</p> <p>RPRA's annual report shall contain a summary of compliance and enforcement activities carried out under this Act during the previous fiscal year.</p> <p>RPRA has statutory authority to set fees under the RRCEA, approve wind up plans and set conditions of approval, request information from IFOs, and appoint or terminate an administrator of an IFO. RPRA also approves changes to waste diversion programs under the WDTA.</p>	<p>The Board shall manage or supervise the management of RPRA's affairs (s. 25(1))</p>	<p>The Registrar must establish, maintain and operate an electronic public registry (s. 50) and may establish procedures with respect to submitting information through the Registry or to RPRA (s. 52)</p> <p>The Registrar, Deputy Registrars and Inspectors have RPRA to conduct inspections and seize items, issue compliance orders, and impose administrative monetary penalties (AMPs) (ss. 78-90)</p> <p>Compliance orders and AMPs issued by the Registrar or Deputy Registrar can only be appealed to the Environmental Review Tribunal (ss. 91-97)</p>

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A list of the Registrar’s, Deputy Registrars’ and Inspectors’ statutory powers is attached to the end of this policy.

Under the RRCEA, RPRA, through the board, has overall responsibility for compliance and enforcement, including responsibility for appointing the Registrar and for summarizing RPRA’s compliance activities in the annual report submitted to the Minister. However, specific compliance and enforcement powers are expressly granted to the Registrar, Deputy Registrar, and Inspectors, rather than the board.¹

The OA and the administrative law context provide further guidance into how the board (and the CEO) should refrain from interfering with the exercise of these compliance and enforcement powers.

RPRA, through the board, also makes its own statutory decisions that are subject to compliance and enforcement by compliance staff.

The Operating Agreement

The OA sets out the Minister’s requirements regarding the division of responsibilities between the board and compliance staff. Under s. 8.1 of the OA, it is the board’s responsibility to develop, report on, and review a risk-based compliance and enforcement framework. Under s. 8.2 of the OA, RPRA acknowledges that the Registrar, Deputy Registrar and inspectors require independent decision-making when exercising their statutory and regulatory duties. As a result:

RPRA agrees that the board and the CEO shall not interfere with the independent exercise of these statutory functions but reserves the right to review how those functions are carried out, consistent with its duty to supervise the management of the business affairs of RPRA and ensure it is consistent with RPRA’s objects.”

The OA thus reinforces the different roles of the board and the Registrar identified in the RRCEA. The board oversees RPRA’s compliance activities but cannot interfere in regulatory decisions by compliance staff.

Procedural fairness

Compliance and enforcement decisions must be fair and comply with the principles of procedural fairness. Among the basic requirements of procedural fairness are that the regulatory decision-maker acts independently and free from bias. Decisions that do not meet

¹ The compliance and enforcement powers set out under the WDTA are structured in a similar way.

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these requirements can be set aside on review.²

Note that other administrative authorities have a similar context for recognizing the importance of the independence of regulatory decision makers. For example, the administrative agreements for other administrative authorities have similar provisions to the OA requiring that the board not interfere with statutory decision-makers. The Delegated Administrative Authority Model Review conducted by Elaine Todres in 2009 also reported that all eight of the AAs surveyed had established “firewalls” to ensure that there was no interference with statutory decision-makers by the board.

Principles to guide the Registrar, CEO, and the board in fulfilling RPRA’s compliance and enforcement duties.

1. If an activity involves discretionary decision-making authority given to the Registrar (or other compliance staff) in the RRCEA or WDTA, the board and the CEO may not interfere, and should not act in a manner that may be perceived as interference.
2. Discretionary compliance decisions may involve the application of board decisions. In those cases, the board and the CEO may still not interfere.
 - For example, the board is responsible for setting fees under the Act; but compliance staff decide independently how to enforce compliance with the obligation to pay.³
3. The board’s primary role relating to compliance is to oversee the compliance function by appointing the Registrar, reporting on compliance activities to the Minister through the Annual Report, and developing, reporting on, and reviewing RPRA’s compliance framework. The board also supports the compliance function by providing resources (through budget approvals and fee setting), strategic insights, and other organizational support for the Registry and the compliance team. The CEO’s primary role is to manage these duties for the board on a day-to-day basis, including supporting the overall development, planning and implementation of the compliance program to help ensure it aligns

² For a straightforward description of how these concepts are applied to administrative decision-makers, see the *BC Administrative Decision-maker’s Manual* at <http://bccat.net/wp-content/uploads/2014/12/BCCAT-Decision-maker%E2%80%99s-Manual-2016-2017.pdf> at pp 11, 18, and 22-24.

³ If the board disagreed with an interpretation of a board decision made by a compliance officer in the exercise of her statutory authority, the board would still retain RPRA to amend its original decision to remove the ambiguity for future compliance actions.

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with the business plan and corporate objectives, and to assist the Registrar in reporting to the board about the compliance function.

4. The Registrar will provide reports to the board and the CEO about the compliance function, which may include aggregate data and trends relating to registrations, reporting, and compliance cases, lists of compliance plans, and information about policies, procedures, or guidelines developed by the Registrar. These items will generally be included as part of the Registrar’s regular reporting to the board, as set out in the Registrar’s Reporting Protocol. This reporting enables the board and the CEO to fulfill their roles as described in principle no. 3 above.
 - The board and the CEO may use this information to evaluate implementation of the compliance framework, and whether board-approved business plan targets and corporate objectives are being met. Generally speaking, the board and CEO would use information about final compliance actions to help identify patterns or trends that are relevant to organizational performance and strategic oversight, but not to question individual compliance decisions made by the Registrar.
 - The reports received by the board from the Registrar should follow a regular reporting protocol. This protocol will be developed jointly by the Registrar and the Governance, Regulatory and Stakeholder Affairs Committee for consideration by the board, consistent with the principles in this document.
 - The board evaluates the compliance function against board-approved business plan targets and corporate objectives, consistent with the principles in this document. The board also supervises and evaluates the performance of the CEO. The board appoints the Registrar but may delegate performance evaluation and supervision of the Registrar to the CEO.

5. The Registrar has the discretion (on the Registrar’s own initiative) to decide to inform or seek input from the CEO or the board regarding compliance decisions in order to (i) avoid surprises, (ii) coordinate public statements, or (iii) better inform the Registrar’s decisions. The Registrar may exercise this discretion when, for example, a compliance matter could have some strategic impact on the organization’s mission or if the exercise of the board’s statutory powers could help resolve a compliance matter.
 - If the board chair wishes to initiate a discussion with the Registrar about a

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matter that implicates the statutory decision-making authority of compliance staff, the chair may communicate directly with the CEO, who can decide to relay or forward the request to the Registrar, or relay it through General Counsel, Chief of Strategic Initiatives. If the CEO wishes to initiate a discussion with the Registrar about a matter that implicates the statutory decision-making authority of compliance staff, the CEO may communicate directly with the Registrar, or can relay the request through General Counsel, Chief of Strategic Initiatives. The Registrar may also decide in advance that the board or the CEO can provide ongoing input into decision-making on a particular compliance-related topic (e.g., Registration requirements).

6. Board members should refrain from making any comments to any party outside RPRA on how the statutes should be interpreted or on any conduct or decisions of the Registrar or compliance staff. Board members also should refrain from communicating with staff about compliance matters.
 - If a board member is approached by anyone outside RPRA about a compliance matter, the board member should immediately refer the person to the Registrar. This mitigates the risk of officially induced error, compromising a compliance matter, or having a board member being a potential witness in a compliance action.
 - If a board member nevertheless receives information from someone outside RPRA about a compliance matter, the board member should either refer the person to the Registrar or relay or forward that information to the chair to pass it on to the Registrar through the CEO.
 - Complaints about the conduct of the Registrar or compliance staff should be referred according to RPRA's Formal Public Complaints and Requests for Clarifications Policy. If a board member receives a complaint, it should be referred to the CEO through the chair of the board.
7. The board uses good judgement when communicating about RPRA's compliance function outside RPRA. The board can decide how to communicate about the compliance framework and can present summaries of compliance activities (e.g., in the annual report). Individual board members do not have independent authority to communicate about the compliance function but rather act through the board.
8. By refraining from any involvement in specific compliance actions and from

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communicating outside RPRA about compliance-related decision-making, the board helps to:

- protect the integrity of the compliance decision-making process,
- mitigate the risk of officially induced error
- avoid confusion and the possibility of inconsistent compliance information being communicated to the sector,
- focus on its primary supervisory and oversight function, and
- preserve the reputation of RPRA.

Questions about this policy

Board members who have questions about this policy should speak to the chair. The chair may in turn ask the CEO for assistance. If staff have a question about this policy, they should speak to their direct supervisor. Senior management may contact the CEO or General Counsel, Chief of Strategic Initiatives directly with questions about this policy.