

Saskatchewan Environmental Code

Moving Forward in Partnership

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PREFACE

This edition of the Saskatchewan Environmental Code (code) is a consolidation of the code chapters established under *The Environmental Management and Protection Act, 2010* and *The Forest Resource Management Act*.

This document is intended to provide a convenient reference that includes the full text of the code chapters. Background information on the results-based regulatory model, principles underlying the code, code structure and contents, enforcement and compliance and code development has also been included to help code users understand the context of the code.

This document is intended to act as a reference, legal copies of the acts and regulations (including the code chapters) are available in print and electronic form from the Saskatchewan Queen's Printer:

Queen's Printer
B19, 3085 Albert Street
Regina, Saskatchewan, Canada
S4S 0B1
Phone: (306) 787-6894
Website: www.qp.gov.sk.ca

Questions or inquiries on the code may be directed to:

Results-Based Regulation and Code Management Branch
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RESULTS-BASED REGULATORY MODEL

The Ministry of Environment (ministry) is implementing a results-based regulatory (RBR) model to help achieve its vision of providing public service excellence in protecting the environment and promoting sustainable use of natural resources to enhance economic and social benefits. Under RBR the ministry, in consultation with stakeholders, defines the expected environmental outcomes, but leaves the specific methods on how to achieve those outcomes up to the regulated community. To support the RBR model, the ministry has made legislative changes, reallocated resources and invested in information technology and management. At the heart of the legislative framework supporting RBR is the Saskatchewan Environmental Code. Further information on RBR can be obtained from the ministry's website at www.environment.gov.sk.ca.

GUIDING PRINCIPLES OF RESULTS-BASED REGULATION

The guiding principles for Results-based Regulation include:

- Materiality** – material environmental changes must be reported by the operator.
- Transparency** – environmental reporting will be accessible to the public.
- Accountability** – operators are responsible for protecting the environment from their actions and the ministry is responsible for monitoring and enforcing compliance.
- Competence** – environmental protection is based on science and knowledge applied by qualified persons.
- Timeliness** – government decisions will be made, communicated and implemented promptly to support economic efficiency and minimize delays to investment and development activity.
- Respect** – all levels of government have defined responsibilities to citizens that must be respected.
- Affordability** – an effective and efficient regulatory regime must be economically viable while maintaining environmental standards and protection.

CODE PURPOSE AND SCOPE

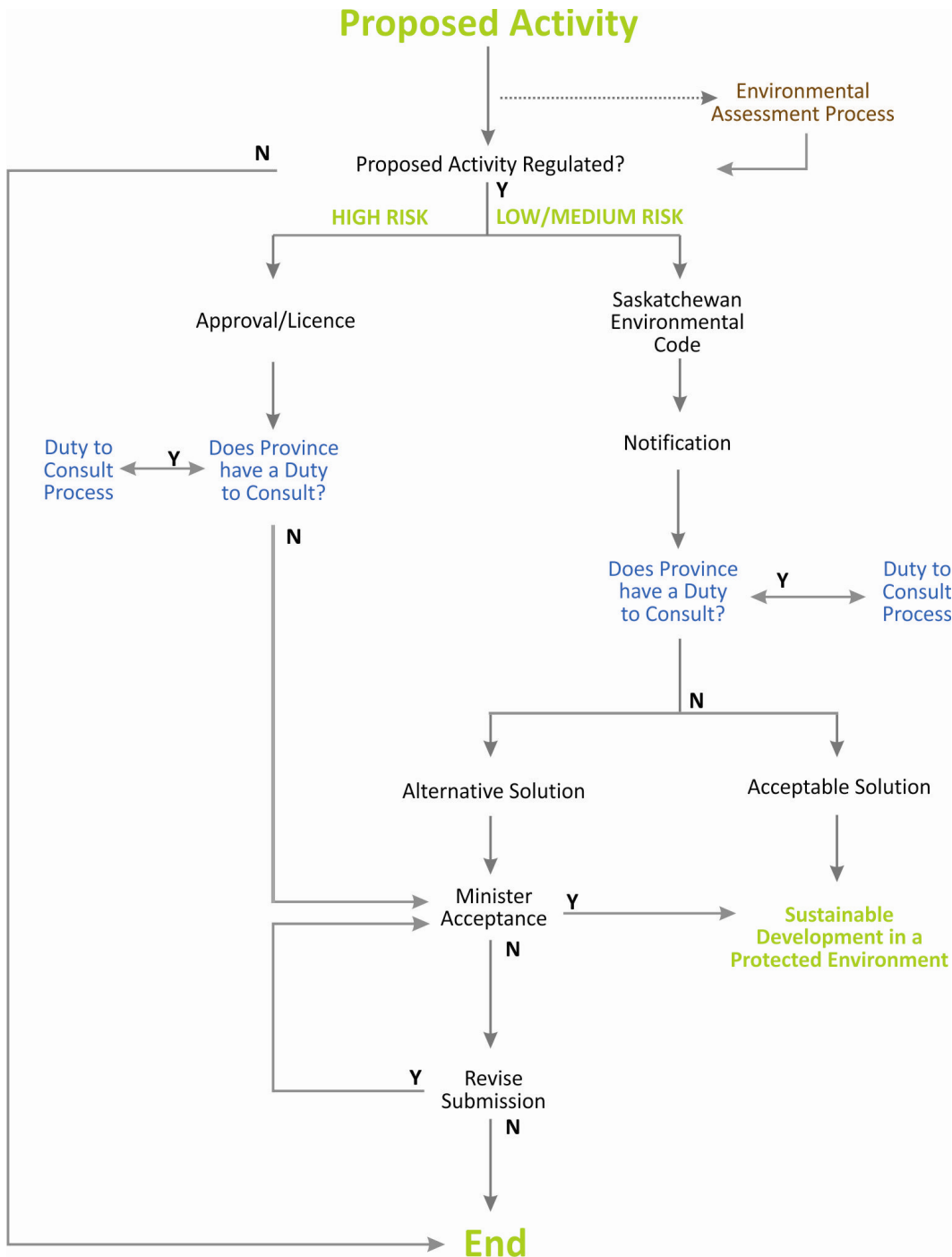
The purpose of the code is to enhance environmental protection and resource management by providing regulatory clarity while fostering innovation, economic growth and social benefits. The code provides the regulated community with options on how to achieve the expected environmental outcomes or results by following the “Acceptable Solutions” (a predefined process) or proposing their own “Alternative Solutions” signed off by a qualified person and accepted by the Minister.

The enacting legislation adopting the code include *The Environmental Management and Protection Act, 2010* and *The Forest Resources Management Act*.

The code does not replace the existing environmental assessment process required by *The Environmental Assessment Act*. Proponents must ensure that development proceeds with adequate environmental safeguards and in a manner broadly understood by and acceptable to the public through integrated assessment of environmental impacts.

With respect to treaty and Aboriginal rights, nothing in the code directly or indirectly abrogates or derogates any treaty or Aboriginal rights recognized and affirmed by subsection 35(1) of the *Constitution Act, 1982*. As such, the code does not change government’s responsibility or duty to consult with First Nations and Métis.

The 16 chapters of the code address issues including air management, forest management, drinking water distribution, wastewater collection, and impacted sites. While the chapters cover a wide scope from resource management and environmental management and protection activities, it does not cover all activities regulated by the ministry. New or existing activities not covered in the code will continue to be regulated by existing regulations and processes. Figure 1 shows the process for activity flow in the results-based regulatory model.



▲ FIGURE 1: Activity Flow in the Results-Based Regulatory Model

FUNDAMENTAL PRINCIPLES OF THE CODE

In addition to the guiding principles of RBR, the following fundamental principles were used to help guide the committees tasked with development of the code.

The Burden of Proof Principle – Activities must be undertaken in an environmentally acceptable manner, placing the responsibility of proving environmental acceptability on those carrying out the activity.

The Precautionary Principle – The mere risk of an adverse effect involves an obligation to take the necessary measures to prevent adverse human health and environmental effects.

Best Management Practices Principle – Should be used for all activities and should be used at all stages of an activity including design, construction, operation, and decommissioning. This may include using the best available technology economically achievable (BATEA).

The Appropriate Location Principle – The site must be appropriate with respect to the results-based objectives of the code and the requirement for air, land and water management. This principle is based on the fact that the choice of site is crucial to the environmental impact that is caused by an activity and that by choosing a suitable site damage both to human health and the environment can be minimized.

The Reasonableness Principle – All the fundamental principles are to be applied in the light of benefits and costs. The conditions associated with activities must be based on environmental considerations while not involving unreasonable expense.

CODE STRUCTURE AND CONTENT

The code is organized into the following five divisions:

- A. General
- B. Land Management and Protection
- C. Water Management and Protection
- D. Natural Resource Management and Environmental Protection
- E. Air Management and Protection

Each division contains chapters governing specific activities. Each chapter imposes obligations on persons engaged in that specific activity. Code users will find the terms “acceptable solution” and “alternative solution” used throughout the chapters.

Acceptable Solutions

The acceptable solutions provide a pre-defined process the regulated community may follow. The chapters of the code establish an agreed-upon acceptable level of risk but do not detail all possible compliance options. The acceptable solutions represent the minimum level of performance required for the regulated community to meet the acceptable risk.

Compliance with the acceptable solutions is deemed to satisfy the results-based objectives contained in the chapter.

Typically, qualified persons are not required when following the acceptable solutions, however, in some cases such as design work or where safety of the public may be a concern, a qualified person may be required.

Alternative Solutions

An alternative solution is a plan developed by a proponent which is designed to meet the results-based objectives and is signed off by a qualified person. When a person carries out an activity that is regulated by the code that does not follow the acceptable solution or an acceptable solution is not provided, they must propose an alternative solution. It is the responsibility of the proponent to propose an alternative solution. It is not the duty of the ministry to develop an alternative solution for the proponent to comply with the code.

The proponent will be required to engage a qualified person, defined in the chapter, to certify that the activities contemplated in the alternative solution will meet the results-based objectives. In general, the alternative solution proposal should achieve outcomes equal to or better than those specified in the acceptable solution. Minister's acceptance is required on all proposed alternative solutions prior to the activity being carried out. The Minister may accept, accept with conditions or reject the alternative solution.

As knowledge and experience with outcomes advance, today's proven alternative solutions could become tomorrow's acceptable solutions.

Results-Based Objectives

Each chapter with an alternative solution contains results-based objectives describing, in broad terms, the overall outcomes, or results, that the ministry expects the regulated community to achieve. The objectives serve to define the boundaries of the subject areas the chapter addresses. The results-based objectives describe the required outcomes of specific activities supported by performance and enabling objectives.

The wording of the results-based objectives includes key phrases: "limit the probability" and "unacceptable adverse effects" or "unacceptable impairment or damage". The phrase "limit the probability" is used to acknowledge that the chapters cannot entirely prevent those undesirable situations from happening. The phrase "unacceptable adverse effects" and "unacceptable impairment or damage" acknowledges that the chapters cannot eliminate all adverse effects/impairment or damage: the "acceptable" adverse effects/impairment or damage are the adverse effects/impairment or damage remaining once compliance with the chapter has been achieved.

Information Notes

Information notes have been included in the chapters to provide code users with further information or direction. Information notes are not part of the legal text of the chapters and are inserted for convenience of reference only.

QUALIFIED PERSONS

Protection of the environment requires the expertise of many professional disciplines. These professionals are referred to as “qualified persons”. Qualified persons are either members of a class of persons set out in the code or an individual designated by the Minister.

Members of a class of persons listed in the chapters were established by the Qualified Persons Advisory Committee based on the following principles:

Adhere to existing professional legislation – rely on the existing professional associations and respect the exclusive scopes of practices of certain professions.

Inclusive – no exclusion of others with competency based on equivalent education and experience.

Supervisory role – in providing their opinion, the qualified person may have a supervisory role (certifying that appropriate steps have been taken and that advice relied upon is sound).

Labour mobility – comply with existing trade agreements.

An individual who is not a member of a class of persons listed in a chapter but who has acquired the education and experience required to perform a specific task, may be designated by the Minister as a qualified person. These persons are required to apply to the Minister to be designated. More information on qualified person designation can be obtained from the ministry’s website at www.environment.gov.sk.ca/code.

There are two separate types of responsibilities for qualified persons:

- 1) to provide an opinion
- 2) to do the work

A qualified person may be required to provide a certificate or opinion on whether a plan or an activity conforms to the requirements in the chapter and a qualified person may be required to physically perform a task (e.g.: design a plan, carry out the work).

In general, the qualified person is required to take all reasonable and prudent actions to ensure that the certificate or opinion does not contain any misrepresentation. The qualified person is also required to disclose all material facts and comply with any professional standards and ethics applicable to the qualified person.

STANDARDS

The standards referenced in the code are legal documents that establish uniform specifications, procedures, criteria, methods, processes or practices. The standards represent a minimum acceptable benchmark developed from widely accepted and proven principles, practices or guidelines in a given area to help promote effective and efficient environmental and resource management.

The standards become legal documents through adoption in the code. The standards should not be used as standalone documents and are only applicable to the legislation, regulations or code chapter(s) that references them.

The standards are either developed by the ministry or developed by standard setting organizations. Some of the standards developed by the standard setting organizations are pay-for-use and it is the responsibility of the standards user to purchase those applicable standards.

ENFORCEMENT AND COMPLIANCE

If it can be demonstrated that a qualified person does not meet the requirements mentioned above, the Minister may use the following enforcement and compliance tools available:

- conduct an investigation to determine what, if any, enforcement action is to be taken;
- issue warnings of non-compliance;
- impose conditions that must be met before the Minister will accept any document or other material prepared by that qualified person or refuse to accept any documents or materials;
- impose an administrative penalty. An administrative penalty is a civil fine imposed by ministry officials;
- file a complaint with the governing body of the profession where the qualified person is a member of a self-regulating profession;
- initiate prosecution for breach of the duty imposed on the qualified person.

While protection of the environment requires the expertise of many professional disciplines, the ultimate responsibility lies with the owner (the regulated person for a particular activity). The regulated person is responsible to take reasonable and prudent measures in protecting the environment and ensuring sustainable use of natural resources to enhance economic and social benefit. If a person does not comply with the obligations set out in the chapter, the Minister may use the following enforcement and compliance tools available:

- review whether additional obligations should be imposed on the regulated person;
- require the regulated person to provide the ministry with the results of any compliance evaluation conducted by the regulated person (e.g., evaluation from environmental management systems such as ISO 14000);

- conduct inspections or review submissions from responses to inspection reports;
- issue notice of violations (warnings of non-compliance), provided with appropriate remedial action plan and further information of the consequences of continued non-compliance;
- conduct an audit to determine how well the obligations imposed on the regulated person have been met or to determine an explanation why the terms and conditions have not been met;
- conduct an investigation. The ministry has the authority to enter property, review records, seize property etc.;
- cancel, amend, alter or suspend an approval, permit or alternative solution if the regulated person has failed to comply with the terms and conditions imposed, the regulated person has contravened the Act, the regulations, the code, any order or the accepted alternative solution, the regulated person has made false or misleading statements, changes are made to the activity without ministry approval or where the Minister is satisfied it is in the public interest;
- issue an order when the Minister believes a person is carrying out an activity that may cause significant harm;
- impose an administrative penalty. An administrative penalty is a civil fine imposed by ministry officials;
- obtain an order from the court requiring compliance. If the regulated person does not obey the court order they can be charged with contempt of court;
- initiate prosecution for breach of the Act, regulations or the code.

CODE DEVELOPMENT

The code was developed using a collaborative and consensus-driven process involving various individuals with extensive knowledge in environmental protection, resource management, law and governance. In all, more than 200 experts and industry leaders were involved, directly or indirectly, in the development of the code.

The Ministry of Environment provides program support for the Code Development Committee, the Qualified Persons Advisory Committee and Content Committees.

The Code Development Committee provided overall guidance to the development of the technical components of the code. The qualified person(s) for each activity covered by the code was developed by the Qualified Persons Advisory Committee. The actual writing of the code technical contents was done by various Code Content Committees.

The code is a living document. As such, it will be evaluated and revised as necessary and additional chapters will be added using the same collaborative and consensus-driven process.