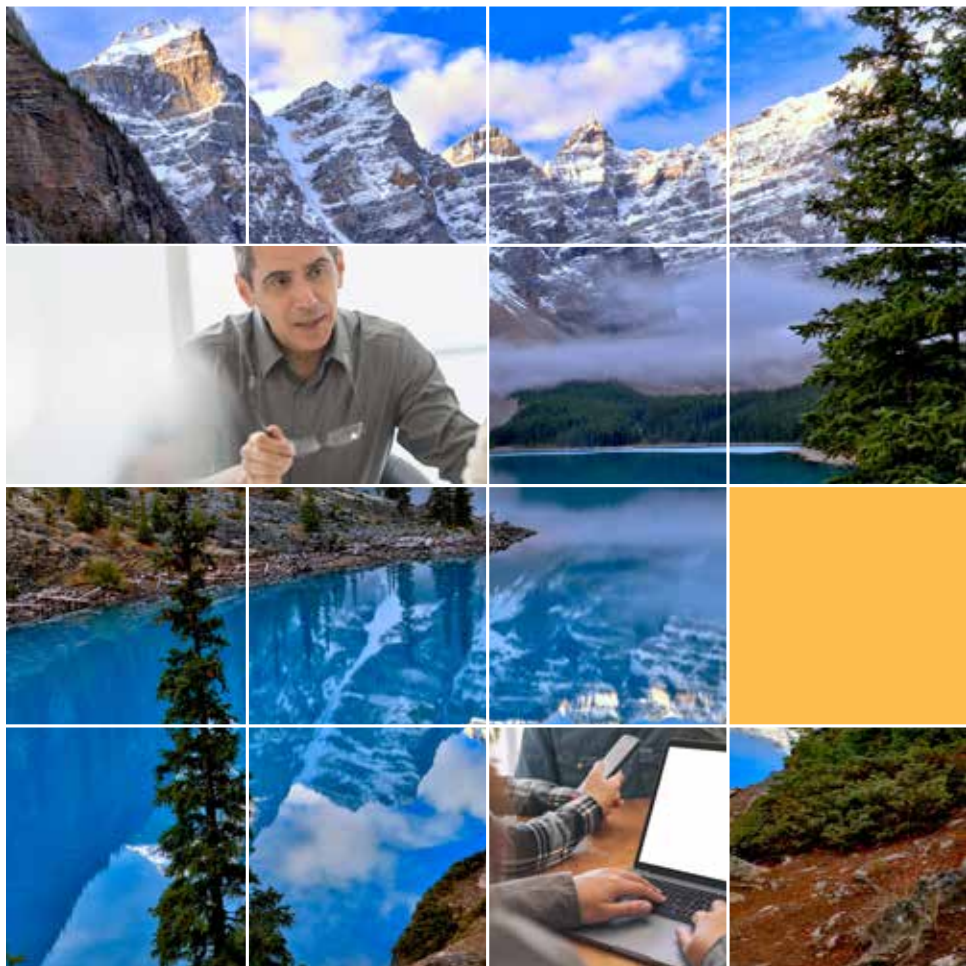




Canada Energy
Regulator

Régie de l'énergie
du Canada

Confidential Disclosure (Whistleblower) Process Guide



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Introduction

The Canada Energy Regulator (CER) is Canada's energy and safety regulator. We take all reports of non-compliance seriously, and will take enforcement action if we discover that our regulatory requirements are not being followed. Examples of non-compliance could include: violations of the *Canadian Energy Regulator Act* (CER Act) and regulations involving the safety of pipelines and facilities, pipeline integrity, environmental protection, emergency management and security, or damage prevention.

Our Confidential Disclosure (Whistleblower) Process Guide is based on internationally-recognized best practices, and formalizes the way we receive, track, and handle confidential disclosures regarding CER-regulated pipelines and facilities.

The purpose of this guide is to provide the public with:

- information regarding the CER's Confidential Disclosure Process
- guidance regarding how to report alleged non-compliances by CER-regulated companies an overview on how the CER facilitates, follows-up and closes out all reports of
- alleged non-compliances

We encourage all members of the public to use this guide when reporting anything they believe is a non-compliance issue.

CER Reporting Mechanisms

The Confidential Disclosure (Whistleblower) Process Guide provides the CER with a formalized way to receive, track and handle confidential disclosures related to CER regulated pipelines and facilities.

The CER has long encouraged the reporting of non-compliances associated with its regulated companies, and are committed to providing a safe, easy and anonymous way for the public to report information. Effective 3 April 2017, we have contracted ClearView Connects (ClearView), a confidential reporting service that will accept anonymous disclosures on the CER's behalf. All information reported will be collected, stored, and managed in a secure manner. Information that could reveal the identity of a tipster will be isolated from other CER databases.

Using this service the public may submit information in the following ways:



Online through the secure website at www.clearviewconnects.com



Over the phone 24/7 ClearView access/service through the CER's dedicated toll-free number at 1-866-358-1718



**By mail through the confidential post office box at:
P.O. Box 11017, Toronto, Ontario, M1E 1N0**

Disclosures that are deemed to be emergencies will be re-directed to the CER's emergency line.

Blowing the Whistle: Your Role as the Tipster

The CER defines "tipster" as the person who reports an alleged act of non-compliance. All information can be submitted using ClearView's reporting system and tipsters may submit their report in the format of their choosing (as outlined above).

The tipster may wish to provide documents, images, photos or other relevant information to the CER. The decision to provide such materials rests solely with the tipster. The tipster's role is complete once they have submitted their report. They will not be required to conduct, review, consider, or otherwise review an investigative step or any other activity. It will then up to the CER to decide the next course(s) of action.

There is no compensation in exchange for submitting information.

For more guidance on what types of information to include in your disclosure see section below on Guidance for Tipsters: Reporting Allegations



Enhancing Confidentiality

We acknowledge that being a tipster can be difficult and stressful. This is why we do our best to ensure the confidentiality of those who report alleged non-compliances. All confidential disclosures are initially received by ClearView Connects. This provides tipsters with a secure and reliable channel to report alleged non-compliances.

Prior to submitting any information, you will be required to make a written declaration indicating that you would either like to remain anonymous or that you are waiving your claim to anonymity. If you choose to remain anonymous, the CER's process is structured so as to maximize confidentiality and security. To maintain the integrity of this process, we use the following procedures:

1. Only trained CER staff who are members of the Disclosure Evaluation Committee are permitted to review disclosures.
2. All written disclosures, information regarding the tipster's identity, correspondence to and from the tipster, and other documents that could reveal the tipster's identity will be physically and electronically collected, stored, and managed securely. Information that could reveal the identity of a tipster will be isolated from other CER databases.
3. All physical and digital (electronic) documents are marked as protected documents.

It is important to note, however, that in certain instances the CER may be required by law to provide information that could identify a tipster. While we do our best to maintain your privacy, absolute confidentiality cannot be guaranteed. You will be advised in advance if there is a lawful release of information that could identify you.

Decisions regarding CER compliance verification activities, courses of action, and dispositions rest with the CER alone.

Confidential Disclosure Model: What Happens When a Tip is Submitted

The CER's model for confidential disclosure has four distinct phases:



Receive



Assess



Action



Conclude

- **Receive** – the CER receives a confidential disclosure from a tipster by way of ClearView. If the tip includes any information that could identify the tipster it is removed before any actions take place. Should the CER staff receive a tip directly, they will encourage the tipster to make the disclosure to ClearView in order to ensure the proper process channels are followed.
- **Assess** – the CER will review and assess the disclosure provided and determine a course of action.
- **Action** – the CER will take action and respond to the disclosure. Examples of action may include compliance verification activities or referring the disclosure to another lawful authority or regulator.
- **Conclude** – all disclosures are then closed out either with or without an enforcement action. Examples for reasons of non-enforcement actions may include: closing the disclosure on grounds of insufficient information, not falling within CER jurisdiction, not being in the public interest (considerations include timeliness, seriousness of the allegation), or at completion of the CVA.

Guidance for Tipsters: Reporting Allegations

The CER assesses all allegations of non-compliances brought forward through our Confidential Disclosure (Whistleblower) Process Guide. This guidance is to help ensure the information you provide is complete, so that we may act as quickly as possible. Disclosures should provide specific details such as:

- Specific dates and locations
- The name of the pipeline and/or facility involved
- Where possible, specific violations of the Act or Regulations
- The name of the individual or individuals alleged to have committed or are about to commit an alleged act of non-compliance
- Identities of witnesses present or those who may have knowledge of the alleged act of non-compliance
- Information about whether the alleged act of non-compliance was reported to the company
- Information about how the company responded or failed to respond to an internal report of the alleged act
- Reasons (if any) why the company was not advised of the alleged act of non-compliance
- Other information such as documentation, incident reports, photos, etc. The decision to provide such information rests solely with the tipster.
- Any actual consequences of the alleged act of non-compliance such as injuries, damage to property, damage to the environment etc.
- Reprisals (real and threatened) to the tipster or others
- Whether the disclosure has already been reported the CER.

Submitting in Writing vs. Verbally

Individuals may report either in written form or verbally – however written is preferred for a number of reasons that benefit both the CER and the tipster:

- Important information could be omitted, misinterpreted or misunderstood by both parties.
- In the event that a tipster is the subject of a reprisal, the tipster must be able to demonstrate that he or she has actually reported the alleged act of non-compliance. An allegation made in writing is a substantially more definitive record.
- Written communication is often the best way to safeguard anonymity because the tipster can control content and provide fewer personal details.

Assessing the Elements of a Disclosure

The content and accuracy of the disclosure is important so as to efficiently process the allegation. The elements and factors that can affect the assessment of disclosures include:

- **Good Faith.** Disclosures that appear to be frivolous or extortive will not be assessed.
- **Act of Non-Compliance.** Activities reported must meet the CER's definition of non-compliance.
- **Recentness of the Alleged Act of Non-Compliance.** Acts of non-compliance that are alleged to have occurred months or years ago may be more difficult to verify and prove. The sooner the disclosure, the better.
- **Quality of Disclosure.** Disclosures that are based on second hand information, vague accounts, and generalities are generally more difficult to process.
- **Within CER Jurisdiction.** Disclosures need to fall within the CER's jurisdiction. If the matter does not, it may be concluded or referred to the appropriate lawful authority.
- **Public Interest.** The Disclosure Evaluation Committee will assess whether it is in the public interest to act on the disclosure.



Follow-up and Courses of Action

During the Assessment Phase

After conducting a preliminary assessment of the disclosure, the CER will decide on a course of action. The next steps could include:

- **Requiring Additional Information From the Tipster** – If the CER decides that it requires additional information or clarification from the tipster before it can reach an informed decision, it will contact the tipster via ClearView Connects. It will be up to the tipster to log-in to the system to check for messages. The tipster is under no obligation to reply to a request for additional information.
- **Alleged Act of Non-Compliance Is Not Within CER Jurisdiction** – If the alleged act of non-compliance is a matter that is not under our jurisdiction no further actions will be required. The tipster will be notified through the reporting system.
- **No Follow-Up Required** – If it is assessed that the disclosure is not suitable to justify compliance verification activities due to not meeting the requirements then it may be concluded. The tipster will be notified through the reporting system.
- **Specialist Assigned for Compliance Verification Activities** – If the assessment is that the disclosure is suitable for compliance verification activities, it shall be assigned to a specialist. The specialist will be provided with the edited version of the tipster's original disclosure only. After the specialist has completed compliance verification activities and any enforcement activities the Tipster will be notified via the reporting system.

Reprisals

Section 6.3(1)(a) of the Canada Energy Regulator *Onshore Pipelines Regulations* requires regulated companies to have a policy for the internal reporting of hazards, potential hazards, and near misses that includes the conditions under which a person who makes a report will be granted immunity from disciplinary action. The CER has a mandate to review such policies pursuant to this regulation.

Notwithstanding a breach of this section, the CER has no authority to compel a regulated company to rehire a person that the regulated company has terminated.

GLOSSARY OF TERMS

- **Act** – the *Canadian Energy Regulator Act*.
- **CER** – Canada Energy Regulator
- **Company** – a company regulated by the CER. Companies regulated by the CER are required to seek authorization or approval for various activities and must comply with the *Canadian Energy Regulator Act*, the *Canada Oil and Gas Operations Act*, the *Canada Petroleum Act*, and other laws of Canada.
- **Compensation** – a reward, financial payment, consideration, indemnification, offer of employment, actual employment, or any other benefit.
- **Compliance verification tools** – the tools used by the CER to verify compliance with the Act and Regulations. Compliance verification tools include audits, inspections, compliance meetings, and investigations.
- **Confidential Disclosure (Whistleblower) Process Guide** – the CER’s collective operational, administrative, and strategic mechanisms to receive, assess, investigate, and conclude disclosures of alleged acts of non-compliance by regulated companies.
- **Disclosure** – a confidential written report about a company’s alleged act of non-compliance involving the Act and Regulations. A disclosure may be made anonymously but it must be received by the CER in writing.
- **The Disclosure Evaluation Committee**
 - Conducts a preliminary assessment of the disclosure
 - Identifies critical issues that may require immediate action.
 - If required, requests additional information from the Tipster through ClearView. A request for additional information from the Tipster will remain open for a period of three weeks.
 - Determines the seriousness of the alleged act of non-compliance.
 - Identifies specific allegations of non-compliance.
 - Determines whether there is sufficient information to conduct compliance verification activities.
 - Identifies any other matters that should be addressed as a result of the disclosure.
 - Determines if an alleged act of non-compliance falls within CER jurisdiction.
- **Emergency** – an event, or imminent event, outside the scope of normal operations that:
 - a) Poses a clear and present significant threat to the health or safety of people, property, or the environment.
 - b) Has caused serious injury to any person.
 - c) Requires prompt coordination of resources to protect the health or safety of people, property, or the environment to limit actual or imminent harm.
- **Enforcement tools** – the tools used by the CER to obtain compliance, deter future non-compliance, and prevent harm.
- **Environment** – has the same meaning as described in section 2 of the *Impact Assessment Act* (2019).
- **Good Faith** – a reasonable belief that an act of non-compliance actually occurred. A good faith disclosure to the CER is neither frivolous, extortive, nor is it simply a report of an occupational grievance.
- **Non-compliance** – a contravention of the Act or a regulation made pursuant to the Act.
- **Personal information** – personal information as defined in section 3 of the *Privacy Act*.
- **Public Interest** – The public interest is inclusive of all Canadians and refers to a balance of economic, environmental and social considerations that changes as society’s values and preferences evolve over time.
- **Regulation** – a regulation created by the Act.
- **Reprisal** – any measure taken or directed against a Tipster because that Tipster has sought advice about making a disclosure, made a disclosure, co-operated in an investigation, declined to participate in an act of non-compliance, or done anything in accordance with the Act. Reprisals include adverse and unwarranted employment action such as:
 - a) A dismissal, layoff, suspension, demotion or transfer, discontinuation or elimination of a job, change of job location, reduction in wages, changes in hours of work or reprimand;
 - b) Unwarranted discipline;
 - c) Any measure, other than one mentioned in paragraphs (a) and (b), that adversely affects a person’s employment or working conditions such as harassment, bullying, shaming, or shunning; and
 - d) A threat to take any of the measures mentioned in paragraph (a) to (c).
- **Specialist** – an employee of the CER skilled, trained, and responsible for conducting inspections and/or investigations.
- **Tipster** – a person who provides the CER with a confidential disclosure of an alleged act of non-compliance. A Tipster may remain anonymous.





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