

ALBERTA PETROLEUM MARKETING COMMISSION

WHISTLEBLOWER PROTECTION POLICY

~ February 2020 ~

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WHISTLEBLOWER PROTECTION POLICY FOR THE APMC

BACKGROUND

1. Purposes of the *Public Interest Disclosure (Whistleblower Protection) Act* and application.

The *Public Interest Disclosure (Whistleblower Protection) Act* (“**PIDA**”) came into effect on June 1, 2013. PIDA applies to the Alberta Petroleum Marketing Commission (the “**APMC**”) as a public entity. The main purposes of PIDA are:

- to facilitate the disclosure and investigation of “Wrongdoings” which are defined as significant and serious matters in or relating to public entities that an employee believes may be unlawful, dangerous to the public or injurious to the public interest (see below for a more detailed description);
- to protect employees who make those disclosures;
- to manage, investigate, and make recommendations respecting disclosures of wrongdoing and reprisals; and
- to promote public confidence in the administration of public entities.

Day to day workplace issues that fall short of “Wrongdoings” should be dealt with using existing APMC policies and procedures or policies and procedures available to APMC Employees.

The policy applies only to Employees of APMC. Employees of the Department of Energy who perform work for APMC are covered by the Department of Energy whistleblower protection policy.

2. Support for Whistleblowers

APMC is committed to establishing and maintaining whistleblower policies and procedures that comply with PIDA.

APMC is committed to promoting ethical behavior by its Employees. Every Employee is expected to perform his or her duties with the utmost integrity; and to conduct themselves honestly, ethically, and with the highest degree of professionalism and in accordance with APMC's Code of Conduct.

APMC is committed to providing its Employees with information about PIDA, APMC's whistleblower policies and its disclosure and investigation procedures.

APMC is committed to fostering a working environment in which its Employees may make a disclosure of Wrongdoing in good faith without fear of Reprisal.

DEFINITIONS

The following defined terms are used in this document:

“Chief Officer” means the chief executive officer of APMC appointed by the board of directors. The responsibilities of the Chief Officer include, but are not limited to:

- establishing and maintaining effective internal policies and procedures for the disclosure and investigation of Wrongdoings;
- establishing and maintaining effective systems and strategies that mitigate the risk of Reprisals against whistleblowers;
- providing adequate financial and human resources to those investigating a disclosure of Wrongdoings;
- ensuring that Employees and Officers are aware of APMC's whistleblower policies and procedures and the whistleblower protections available in PIDA; and
- preparation and submission of an annual report to the Public Interest Commissioner on all disclosures that have been made to the Designated Officer of APMC relating to Wrongdoings.

“Department” means a department established under section 2 of the *Government Organization Act* (Alberta).

“Designated Officer” means the Chief Officer or another individual designated by the Chief Officer as the individual primarily responsible to manage and investigate disclosures of Wrongdoings. The current Designated Officer for APMC is the chief executive officer. The

responsibilities of the Designated Officer include, but are not limited to:

- being a contact point for general advice and guidance about PIDA and APMC’s whistleblower policies and procedures;
- liaising with the office of the Public Interest Commissioner;
- liaising with the Chief Officer should the person occupying that position be different from the person occupying the position of “Designated Officer”;
- coordinating the disclosure process including impartially assessing each disclosure to determine whether it is a public interest disclosure;
- coordinating an investigation where an investigator has been appointed;
- advising the whistleblower of the progress of an investigation;
- establishing and managing a confidential filing system;
- developing a tracking system to manage disclosures and investigations;
- maintaining the confidentiality of the identity of the whistleblower and the identity of the person who is the subject of the disclosure; and
- protecting Employees involved in a disclosure of Wrongdoing from possible Reprisals.

“**Employee**” means all individuals employed by APMC, and includes any individual who has suffered a Reprisal and has been terminated by APMC.

“**Public Entity**” means any Alberta agency, board, commission, or Crown corporation.

“**Public Interest Commissioner**” means the individual appointed by the Alberta Lieutenant Governor in Council to carry out the duties, responsibilities, and functions set out in PIDA including but are not limited to:

- carrying out the purposes of PIDA;
- review and investigation of disclosures of Wrongdoings and complaints of Reprisals made under PIDA; and
- performance of any other functions that are set out in PIDA.

“**Reprisal**” means any adverse employment action taken against an Employee who has, in good faith, sought advice about making a disclosure, made a disclosure, co-operated in an investigation of a Wrongdoing, or declined to participate in a Wrongdoing in accordance with PIDA. A reprisal may include, but is not limited to:

- a dismissal, layoff, suspension, demotion or transfer, discontinuation, or elimination of a job, change of job location, reduction in wages, change in hours of work or reprimand;
- any measure that adversely affects the Employee’s employment or working conditions; and
- a threat to take any measures mentioned above.

“**Wrongdoings**” has the same meaning set out in PIDA and means:

- a contravention of a provincial or federal act or regulation;
- an act or omission that creates a substantial and specific danger to the life, health, or safety of individuals other than a danger that is inherent in the performance of the duties or functions of an employee;
- an act or omission that creates a substantial and specific danger to the environment;
- gross mismanagement, including an act or omission that is deliberate and that shows a reckless or wilful disregard for the proper management of:
 - public funds or a public asset,
 - the delivery of a public service, including the management or performance of:
 - a contract or arrangement identified or described in the regulations, including the duties resulting from the contract or arrangement or any funds administered or provided under the contract or arrangement, and
 - the duties and powers resulting from an enactment identified or described in the regulations or any funds administered or provided as a result of the enactment, or
 - employees, by a pattern of behaviour or conduct of a systemic nature that indicates a problem in the culture

of the organization relating to bullying, harassment or intimidation;

- a wrongdoing prescribed in the regulations; and
- knowingly directing or counselling an individual to commit a wrongdoing mentioned above.

POLICIES

If an Employee becomes aware of a Wrongdoing, the individual is encouraged to disclose such behaviors and conduct to the Designated Officer. In a circumstance where an Employee is not comfortable disclosing to the Designated Officer because, for example, the conduct involves the Designated Officer, the Employee is encouraged to make a disclosure directly to the Public Interest Commissioner as further described below, and may seek assistance from any member of the APMC board of directors.

The identity of individuals involved in the disclosure of Wrongdoings, including the Employee making the disclosure and the individuals alleged to have committed the Wrongdoings, shall be kept confidential during the investigation of disclosures except where a disclosure is determined to be an imminent risk of a substantial and specific danger to the life, health or safety of individuals, or to the environment; or except where the identity of an individual must be revealed by law. APMC will protect Employees who make disclosures of Wrongdoings from Reprisals where the disclosures are made in good faith.

This policy does not apply to matters that may be more appropriately dealt with by another applicable policy of APMC, another Public Entity, or a Department. For example, this policy does not apply to:

- Employee performance;
- a human rights complaint;
- a sexual harassment complaint; or
- any unethical conduct by members of APMC's board of directors.

PROCEDURES

1. Request for Information

An Employee who is considering making a disclosure may request information or advice from the Designated Officer, Chief Officer, or from the Public Interest Commissioner.

The Designated Officer, Chief Officer, or the Public Interest Commissioner may request that the request be made in writing.

The office of the Public Interest Commissioner can be contacted Monday to Friday 08:15-12:00 / 13:00-16:00 at toll-free province-wide 1.855.641.8659 or via email at info@pic.alberta.ca

2. Disclosure Process

(a) Disclosure to the Designated Officer

If an Employee becomes aware of a Wrongdoing and wishes to disclose, the individual shall disclose such behaviors and conduct to the Designated Officer.

The Employee making the disclosure above may also contact the Public Interest Commissioner and advise the Public Interest Commissioner that the disclosure has been made to the Designated Officer for the purposes of commencing an investigation.

Employees may make a disclosure of Wrongdoing directly to the Public Interest Commissioner using the online web-form available at www.yourvoiceprotected.ca. Employees who are unable or do not wish to use the web-form may contact the office of the Public Interest Commissioner at 1.855.641.8659.

An Employee may make a disclosure of Wrongdoing anonymously to the Public Interest Commissioner.

The Public Interest Commissioner has exclusive jurisdiction to receive and investigate complaints of Reprisal. Employees who believe they have been the subject of a Reprisal can submit a “Complaint of Reprisal” form directly to the Public Interest Commissioner. The form is available at www.yourvoiceprotected.ca.

(b) Disclosure to a Department, another Public Entity, or the Public Interest Commissioner

The Designated Officer may refer a disclosure of Wrongdoing to a Department or another Public Entity if the disclosure would, in the opinion of the Designated Officer, be more appropriately dealt with there (e.g. if the Designated Officer is in a conflict of interest).

The Designated Officer may also refer a disclosure of Wrongdoing to the Public Interest Commissioner if the Designated Officer reasonably believes that the matter to which the disclosure relates constitutes an imminent risk of a substantial and specific danger to the life, health or safety of individuals, or to the environment. And in such circumstances the Designated Officer must disclose the matter to an appropriate law

enforcement agency, the Chief Medical Officer of Health (for health related matters) or to the department, public entity or office responsible for managing, controlling or containing the risk, as the circumstances warrant.

If the Designated Officer has reason to believe an offence has been committed under an act or regulation of Alberta or under an act or regulation of Canada they must, as soon as reasonably practicable report the alleged offence to a law enforcement agency and the Minister of Justice and Solicitor General. In this case the Designated Officer must suspend its investigation until law enforcement agencies have disposed of the matter.

(c) Form of Disclosures

Disclosures shall be made in writing and include the following minimal information:

- a description of the Wrongdoing;
- the name of the individual(s) involved;
- the date of the Wrongdoing; and
- any information the Designated Officer or Public Interest Commissioner may reasonably require in order to investigate the matters set out in the disclosure.

3. Investigation Process

(a) Timelines

The Designated Officer shall acknowledge in writing a disclosure of Wrongdoing within 5 business days from the date on which the disclosure of Wrongdoing is received by the Designated Officer.

Within 20 business days from the date on which the disclosure of Wrongdoing is received, the Designated Officer shall make a decision as to whether to investigate the disclosure of Wrongdoing and shall notify the individual who submitted a disclosure of Wrongdoing of the decision.

The Designated Officer shall complete an investigation of a disclosure of Wrongdoing and provide an investigation report to the Chief Officer within 120 business days from the date on which the disclosure of Wrongdoing was received by the Designated Officer. The Chief Officer may extend the time period for investigation and provision of an investigation report up to 30 business days.

The investigation report shall include a finding of whether the disclosure was substantiated and, where applicable, any recommendations for corrective action.

The Designated Officer shall advise the individual who has made a disclosure of the progress of an investigation and will advise that individual of any actions taken.

(b) Consultation with the Public Interest Commissioner

The Designated Officer may request advice from the Public Interest Commissioner with respect to the management and investigation of a disclosure of Wrongdoing.

(c) Investigation of multiple Wrongdoings or offences

The Designated Officer may investigate Wrongdoings discovered during the investigation of a disclosure and the Designated Officer shall determine the appropriate action to be taken subject to the timelines set out herein.

The Designated Officer may report alleged offences under an act or regulation of Alberta or under an act or regulation of Canada if the Designated Officer believes that an offence has been committed during an investigation of a disclosure. The Designated Officer shall determine the appropriate action to be taken subject to the timelines set out herein.

The Designated Officer may conduct a single investigation where more than one disclosure of Wrongdoing is received by the Designated Officer on the same matter.

(d) Collection of information

The Designated Officer in the investigation of a Wrongdoing may:

- interview the individual making the disclosure;
- interview other Employees or individuals, including the subject of the complaint; and
- collate any relevant documentation.

The Designated Officer may personally investigate the Wrongdoing and may involve external investigators such as accounting advisors, legal counsel, or forensic examiners.

Pursuant to section 29 of PIDA, the Designated Officer or the Chief Officer may collect, use, and disclose any information that is considered necessary to manage and investigate a Wrongdoing or Reprisal and necessary for the general purposes of complying with PIDA. Some information or documentation collected in any investigation of a Wrongdoing may be protected from disclosure pursuant to section 29(1) of PIDA (including but not limited to information protected by solicitor-client privilege or information or documents that would disclose deliberations of the Executive Council or a committee of the Executive Council).

FOIP contains restrictions on the right of access to a record that would reveal the identity of a person who has requested advice about a disclosure, made a disclosure, or submitted a complaint of reprisal or whose complaints have been referred to the Labour Relations Board unless that information can reasonably be severed from a record.

OFFENCES AND PENALITIES

1. Offences

There are serious offences and penalties under PIDA related to the following:

- **False Statements:** No person (including an Employee making a disclosure) shall knowingly withhold information or make a false statement (at any stage of the disclosure or investigation process), or counsel or direct an individual to provide a false statement to the Designated Officer, Chief Officer, or the Public Interest Commissioner;
- **Obstruction:** No person shall wilfully obstruct, or counsel or direct another person to wilfully obstruct, any individual involved with the investigation of a disclosure of a Wrongdoing or complaint of Reprisal from performing a duty or function under PIDA; and
- **Destruction, Falsification, Concealment:** No person shall destroy, mutilate, falsify, conceal, or alter a document or thing that is likely to be relevant to an investigation under PIDA, or counsel another person to do so.

2. Penalties

Penalties under PIDA include:

- a fine of not more than \$25,000 for a first offence; and

- a fine of up to \$100,000 for a subsequent offence.

3. Disciplinary Action

APMC will not tolerate any offences listed in Part 7 of PIDA or any Reprisals taken against an Employee who in good faith has made a disclosure of Wrongdoing. Any individuals who are found to have committed a Reprisal or an offence under Part 7 of PIDA will be subject to any applicable fines under PIDA and disciplinary action up to and including termination of employment.

REPORTING

1. Report to APMC Chair

The Designated Officer shall report to the chair of APMC all disclosures of Wrongdoing that have been brought to his attention.

2. Report of Chief Officer

The Chief Officer shall prepare an annual report on all disclosures of Wrongdoing that have been made to the Designated Officer. The annual report shall include all information required under PIDA and will be included in the annual report of APMC. The annual report shall not identify any Employee, or include any identifying health information, who sought advice, made a disclosure, or made a complaint of Reprisal.

DISCLOSURE OF POLICY AND PROCEDURES

This policy will be posted on the APMC website.