

Evolution of Compliance Oversight of Environmental Assessment Projects in BC

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1. Introduction:

Since 2011, the British Columbia (BC) Environmental Assessment Office (EAO) has undertaken several initiatives to strengthen the post-certificate¹ phase of the environmental assessment (EA) process, particularly the enforceability of EA certificates and the effectiveness of compliance and enforcement (C&E). This paper relates the story of the evolution of EAO C&E over the last six years, highlighting successes and challenges and describing approaches that may be of value for other jurisdictions.

2. Organizational and Legislative Framework:

EAO manages the review of major projects in BC, as required by the *Environmental Assessment Act* (EA Act). EA in BC under the EA Act provides an integrated process for identifying, assessing, and mitigating potential adverse environmental, economic, social, heritage, and health effects of major projects. Large industrial, mining, energy, water management, waste disposal, food processing, transportation, and resort developments typically require an EA in BC. If a project is approved under the EA Act, an EA certificate is issued that defines the project and specifies required mitigation through a legally binding Certified Project Description (CPD) and conditions.

The EA Act provides C&E mechanisms, including the authority to inspect and a suite of enforcement options, including orders to cease, orders to remedy, compliance agreements, fines, imprisonment, and suspending, amending, or cancelling a certificate.

3. Office of the Auditor General Report on the EAO's Oversight of Projects

In 2011, the Office of the Auditor General (OAG) published an audit concluding that EAO's post-certificate oversight of approved projects was insufficient. The OAG provided six recommendations relating to: clear certificate requirements; environmental mitigation policy; post-certificate monitoring responsibilities; development of a C&E program; effectiveness evaluations; and public accountability.

Concurrent with the audit, EAO began a multi-pronged approach to strengthening both its oversight and the EA certificate language and content².

4. Evolution of EAO Compliance Oversight

Prior to OAG's audit, EAO's approach to compliance verification was *ad hoc*. In 2011, EAO worked with the provincial Ministry of Forests, Lands and Natural Resource

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¹ Following an EA in BC, an EA certificate is issued if the project is approved.

² EAO's approach has proven to be successful. In a 2015 follow-up, the OAG confirmed that EAO had implemented four and partially implemented two of its recommendations.

Operations (FLNRO) to develop a pilot compliance program within EAO. Since then, EAO has developed a full C&E program that is coordinated with other compliance agencies. EAO's C&E Program is staffed by a Director of C&E, four C&E Officers, a Compliance Policy Officer, and shared support staff. In addition to EAO's Officers, over 350 individuals from other provincial agencies are authorized to inspect EA projects on EAO's behalf.

EAO C&E conducts a range of compliance oversight activities. While field inspections are the most valuable oversight mechanism, various desk-based activities are integral to EAO's oversight, such as administrative inspections and review of proponent's compliance self-reports and monitoring reports. The majority of EAO's inspections are determined through an annual planning process. EAO strives to inspect a range of projects each year based on criteria such as project phase, location, and industrial type.

In 2011, EAO C&E Officers were delegated the authority to inspect but not to conduct formal enforcement under the EA Act. Throughout the initial years of the program, Officers relied on warnings to compel proponents to comply, only seeking ministerial level enforcement in rare circumstances. In 2014, FLNRO designated EAO C&E Officers as Natural Resource Officers, enabling EAO to enforce a wide range of natural resource legislation. In 2015, the BC Minister of Environment delegated the authority to issue Orders to Cease and Remedy to EAO C&E Officers. As a result of these changes, EAO's capacity to enforce EA certificates has increased.

5. Key Initiatives to Increase Effectiveness of EA Certificates and EAO's Oversight:

The initiatives to increase effectiveness of EA certificates and EAO's oversight include measures both *during* the EA process and *after* the issuance of an EA Certificate.

During the EA Process:

In 2012, EAO overhauled its approach to EA certificates. Previously, each EA certificate included various documents from the EA and conditions based on commitments the proponent made during the EA process. This approach had proven problematic as there was considerable lack of clarity in some EA certificates, given that commitments and documents developed by the proponent for the EA process were not written with the intention of being enforced, rather to inform the EA process. Historic EA certificates also had considerable inter-project variability due to lack of EA certificate guidance.

In 2012, EAO became more deliberate in establishing the legal requirements for each project. EA certificates now include three components: the certificate itself, a table of conditions, and a CPD. The measures developed during the EA to avoid, mitigate and manage adverse effects are contained within the table of conditions and the CPD. The conditions specify how the project must be constructed, operated, and in some cases decommissioned. The CPD comprises a series of maps and text that describes where and what the project is.

EAO developed a comprehensive policy to guide the development of EA certificates. This policy provides detailed drafting guidance to ensure all conditions are clear, measurable, and enforceable with an appropriate relationship with post-EA permitting. It also includes minimum mapping standards for the CPD. EAO has developed

standardized language for topics frequently addressed in EA conditions.

Post EA Certificate:

In addition to establishing a dedicated C&E program, EAO has undertaken numerous post-EA initiatives to increase the effectiveness of oversight, informed by the extensive learning since the inception of EAO C&E.

Policy Framework:

A wide range of policies, procedures, and guidance documents have and are being developed to support C&E Officers, Aboriginal groups, the public and proponents. These include the development of policies/guidance on officer conduct in the field, the role of Aboriginal liaisons on inspections, complaint processes, compliance self-report requirements, and what to expect during compliance oversight. Many of these documents are (i.e. 2015 Compliance and Enforcement Policy and Procedures) or will soon be available at www.eao.gov.bc.ca.

Interagency C&E Coordination:

There are multiple C&E agencies that conduct oversight of approved projects under the EA Act. Significant efforts are being made to ensure coordination among agencies to improve oversight, enhance interagency learning, and facilitate strategic deployment of resources.

Working with Aboriginal Groups in Compliance Oversight:

To facilitate effective participation of Aboriginal groups in oversight of natural resource development, the Province of BC has developed the *Natural Resource Sector Aboriginal Liaison Program* (NRS ALP); EAO and other provincial agencies participate in this program in addition to their own initiatives with Aboriginal groups.

Through the NRS ALP, government funds liaisons to serve as a conduit between provincial agencies and the Aboriginal community. The liaisons gain employment, including training and field mentoring, catered to their community's interests, and also gain experience in a wide range of natural resource development oversight. Liaisons join agencies on inspections of major projects and other natural resource development.

In addition to contributing to the NRS ALP, EAO C&E has developed an *Aboriginal Liaison Framework* that provides various levels of engagement. Through the Framework, Aboriginal groups work with EAO C&E to develop information sharing protocols, provide input into compliance oversight, participate in inspections, and so on.

Increased Oversight of Management Plans:

EAO has increased its oversight of the development and implementation of management plans, a key form of mitigation required by EA certificates. EAO continues to improve practices and guidance relating to management plans, including internal procedures for review of management plans, external guidance for the development of management plans, and a focus during inspections on the mitigation measures defined within management plans.

Compliance Promotion with Industry:

EAO C&E conducts a wide range of compliance promotion activities with industry,

including participating in conferences and industry association meetings, assisting with interpreting EA certificates, and attending proponent meetings.

Public Accountability in Compliance Oversight:

EAO C&E continues to increase the types of compliance information available on-line. Currently, EAO C&E publically posts all inspection records, warnings, enforcement, proponents' compliance self reports, and various documents required by EA certificates. In addition to EAO's website that provides information on all certified projects, EAO with the provincial Ministry of Energy and Mines and Ministry of Environment are developing a joint website that provides authorizations and compliance information for mines.

6. Lessons Learned and Outcomes

EAO has learned that one must think of post-certificate oversight as an integral component of the EA process. This includes considering *during* the EA how compliance will be effectively conducted and incorporating lessons learned from previous compliance oversight into policy and future EAs. EAO also shares those learnings with proponents to promote compliance. Key learnings and outcomes of EAO's C&E efforts to date are summarized below.

Clear and Measurable Requirements:

Clearly written EA certificates and management plans are critical for effective implementation by proponents and compliance oversight by agencies. While ambiguous statements such as 'if applicable', 'as appropriate', and "where feasible" may appear to provide flexibility, in reality these vague terms increase risk for proponents when staff and contractors interpret these statements in a manner different than the proponent and/or regulators' expectations. EAO's efforts to strengthen certificates and management plans have contributed to both improved compliance and enforceability.

Common Non-Compliances:

The most common issues that cause non-compliance relate to general construction environmental management. EAO C&E and independent environmental monitors (IEMs) frequently observe non-compliances in erosion/sediment control, wildlife attractant management, hydrocarbon management, waste management, and invasive plant control, among other things. To improve compliance in these areas, EAO now requires a Construction Environmental Management Plan and IEM on all projects. EAO is developing guidance to support IEMs.

Relationship between EA and Permitting:

There continues to be confusion in industry and regulators about the relationship between EA certificates and permitting, including regarding overlap and/or conflict between certificate conditions and permit conditions. To address this, EAO continues to work closely with permitting agencies when developing EA conditions to avoid gaps, overlap and conflicts.

Culture of Compliance:

EAO C&E finds a wide range in compliance culture across proponents and contractors. C&E Officers have noted that clear accountability for compliance within proponents/contractors and the presence of senior proponent personnel on the ground increases the likelihood of compliance. EAO's compliance promotion efforts therefore focus on strengthening cultures of compliance.

Failure of proponents to actively monitor and maintain mitigation measures lead to frequent non-compliance, as well as increased time and costs for proponents. Proactive planning, implementation, monitoring, and maintenance are key to achieving compliance. EAO C&E has found it worthwhile to meet with proponents in advance of construction to assist them with understanding the requirements and to advise that requirements will be enforced. These sessions are most effective when attended by senior project personnel, contractors, environmental managers, environmental monitors, and other provincial agencies.

Officer Presence:

Visible C&E Officer presence increases compliance. When proponents receive regular C&E inspections, they and their contractors tend to make additional effort to maintain compliance. EAO coordinates inspections with other provincial agencies to increase oversight. EAO C&E Officers now wear a formal uniform with the provincial coat of arms; this has been found to increase both visibility and credibility, leading to more effective compliance.

7. Next Steps for EAO C&E:

While EAO C&E is now a fully developed program, there is still much to do to codify practices and continuously improve the program. Core activities planned for the next five years include:

- Continuing to strengthen relationships with permitting and C&E agencies;
- Expanding the involvement of Aboriginal groups in compliance oversight;
- Developing a more robust way to consider risk in compliance of EA projects;
- Improving the transition of learning and relationships with stakeholders from the EA process into C&E;
- Supporting the C&E team to address significantly high workload to enable more timely inspection and enforcement; and
- Providing support to other agencies and Aboriginal groups as they develop their C&E programs.

Clear, measurable EA certificates and effective C&E is contributing to achieving the purpose of the EA Act, which is to prevent significant adverse environmental, economic, social, heritage and health effects from major projects.