Environmental Assessment Office

2009 User Guide

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DISCLAIMER

This Guide is not a legal authority and is not intended to provide legal advice or direction. The Guide provides information only, and should not be used as a substitute for the *Environmental Assessment Act* or regulations. In the event of a discrepancy, the *Environmental Assessment Act* and regulations prevail. Portions of the *Environmental Assessment Act* have been paraphrased in the Guide, and should not be relied upon for legal purposes. The procedures described in this Guide may be deviated from, based on specific project circumstances.

Introduction to the guide

The *Environmental Assessment Office 2009 User Guide* helps both proponents and participants understand the British Columbia environmental assessment process managed by the Environmental Assessment Office (EAO).

Throughout the guide, readers will find plain language explanations, checklists, tips and other useful resources. Text boxes have been included which contain key facts or tips. Some tips and key facts are general while others are of more interest to proponents, First Nations, or the public. Where more detailed information may help the reader, the guide references documents on the EAO website.

The guide begins with an overview of the EAO's *Fairness and Service Code* and the main portion of the guide follows. The main portion is organized into two parts. Each part addresses a major environmental assessment topic area.

Part One – Environmental Assessment in British Columbia

This section includes a brief introduction to environmental assessment and its purpose. It discusses the EAO's role and how it works with its federal counterpart, the Canadian Environmental Assessment Agency. The section then describes the legal framework for B.C. environmental assessment in British Columbia, including the *Environmental Assessment Act,* its regulations and some common law that guides the EAO.

Part Two – The Environmental Assessment Process

Part Two forms the bulk of this guide. It explains the eight environmental assessment process steps and what to expect in the pre-application, application and post-certification stages. While this guide focuses on the typical process that most assessments follow, readers will also find sections on "unique circumstances" and "additional considerations" that may arise.

The EAO may update the guide to reflect changes in policy and practice. Email any comments or suggestions to eaoinfo@eao.gov.bc.ca. Write "EAO user guide" in the subject line. (See the "EAO Contact Information" section for additional contact information.)

Fairness and Service Code

The EAO developed a *Fairness and Service Code* which outlines the guiding principles and service standards that the EAO commits to when dealing with proponents, First Nations, and the public.

Guiding principles:

Fairness

- The EAO will undertake objective environmental assessments and will give full and fair consideration to all interests.

Transparency

- Policies will be available on the EAO website, and will be updated as required.
- Information will be provided about the environmental assessment process and how to participate in it.
- Information and records relating to environmental assessments will be available on the EAO website.
- Reasons will be provided for all decisions and recommendations made to the Minister of Environment and to the Minister responsible for the project sector (jointly referred to as the responsible ministers).

Inclusiveness

- The EAO will provide opportunities for all interested parties to participate in the environmental assessment process.

Comprehensiveness

- The EAO will deliver a comprehensive assessment report at the conclusion of each environmental assessment that considers the proposed project's potential significant adverse environmental, economic, social, heritage, and health effects.

Efficiency

- The EAO will promote the efficient use of resources by all participants at all stages of the environmental assessment process.

Service Standards:

Proponents

Timeliness

- The EAO will manage the pre-application and application review stages to support a timely and effective assessment process.
- The EAO will respect the right of proponents to decide whether or not to seek a suspension of the 180-day application review period (recognizing that the EAO itself can suspend the time limit in specified circumstances).

Consultations with First Nations

- The EAO will clearly indicate its expectations of proponents in relation to First Nations and the Crown's duty to consult. This may include directing the proponents to:
    - involve First Nations in relevant studies;
    - incorporate community and traditional knowledge into baseline studies;
    - identify First Nation interests that may be affected by a proposed project; and
    - identify and develop measures to prevent, avoid or mitigate any potentially significant adverse effects on First Nation interests.
- The EAO encourages proponents to explore benefit sharing agreements with First Nations where the parties consider that to be in their mutual interest. The Office will consider any information it receives regarding such agreements when assessing the social and economic impacts of a proposed project. However, such agreements are not considered preconditions to completion of the EA review process or a decision by the responsible ministers.

Early identification of potential concerns and challenges

- The environmental assessment will identify and evaluate potential effects of a proposed project as early in the process as possible, allowing time for adjustments to be made before design decisions are finalized.

Minimizing duplication and overlap with federal reviews

- Where federal and provincial reviews are both undertaken for the same project, the EAO will seek to harmonize reviews in keeping with the

Canada – British Columbia Agreement on Environmental Assessment Cooperation.

- The EAO is committed to exploring options to have only one jurisdiction undertake a review in appropriate circumstances. This may include agreements under section 27 of the *Environmental Assessment Act* to accept the reviews of other jurisdictions as equivalent, or exploring options for delegation to the Province of certain aspects of federal reviews.

First Nations

- The EAO is committed to working constructively with First Nations to ensure that the Crown fulfills its duties of consultation and accommodation.

Respect

- The EAO's relationship with First Nations is based on respect for the asserted and established Aboriginal rights, Aboriginal title and treaty rights of First Nations.
- First Nations have a right to be consulted in accordance with principles established by the Supreme Court of Canada in *Haida v. British Columbia (Minister of Forests)* and related case law.

Capacity

- The EAO provides a limited amount of funding to assist First Nations to participate in the review process, particularly those aspects of the review where the EAO is engaged in direct discussion with First Nations.
- The EAO encourages proponents to provide First Nations with additional capacity funding to participate in other aspects of the environmental assessment, such as engagement with the proponent during studies and information gathering.

Government-to-government dialogue

- The EAO will provide First Nations with an opportunity to be consulted on a government-to-government basis. This is in addition to the invitation to participate as members of the working group.
- The EAO will consult First Nations on draft assessment reports, and will afford First Nations an opportunity to have their views on draft assessment reports included in the package of materials sent to the responsible ministers when a project is referred for a decision.

Dealing with differences

- If differences arise between the EAO and First Nations concerning the nature and extent of consultation or accommodation required, or whether the Crown's duties have been met, the EAO will seek to resolve them consensually. In any case where that is not possible, the Office will provide a clear explanation of its position.

The Public

Opportunities for involvement

During the pre-application stage, the public can be involved:

- by providing input on what issues the environmental assessment should examine;
- participating in public meetings, open houses, and other public forums arranged by the proponent or the EAO; and
- following the process through the Office's website.

During the application review stage, further opportunities for public involvement include:

- participating in public meetings, open houses, and other public forums arranged by the proponent and/or the EAO; and
- reviewing the application and submitting comments on the proponent's studies, analyses or conclusions.

Consideration of views

The EAO's assessment report documents all interested parties views. The assessment report is referred to the responsible ministers at the end of the assessment and is considered by the minsters when deciding whether to issue an environmental assessment certificate. Once the responsible ministers make a decision, the EAO posts the assessment report and any reasons and recommendations on its website.

Access to information

The EAO maintains an on-line publicly available database of all projects and important documents; this is known as the electronic Project Information Centre (*e-PIC*).

Information on the review process and the documentation required for a particular project, including the proponent's application for an environmental assessment certificate, can be accessed through *e-PIC*.[1]

The EAO's homepage also contains a "What's New" section. It provides information about projects undergoing an environmental assessment when they have reached certain milestones. Each posting provides the project and proponent's name, identifies the milestone, includes a brief description, and contains links to *e-PIC* and relevant documents. Figure 1 shows the EAO's internet homepage and highlights the What's New section and the *e-PIC* link.

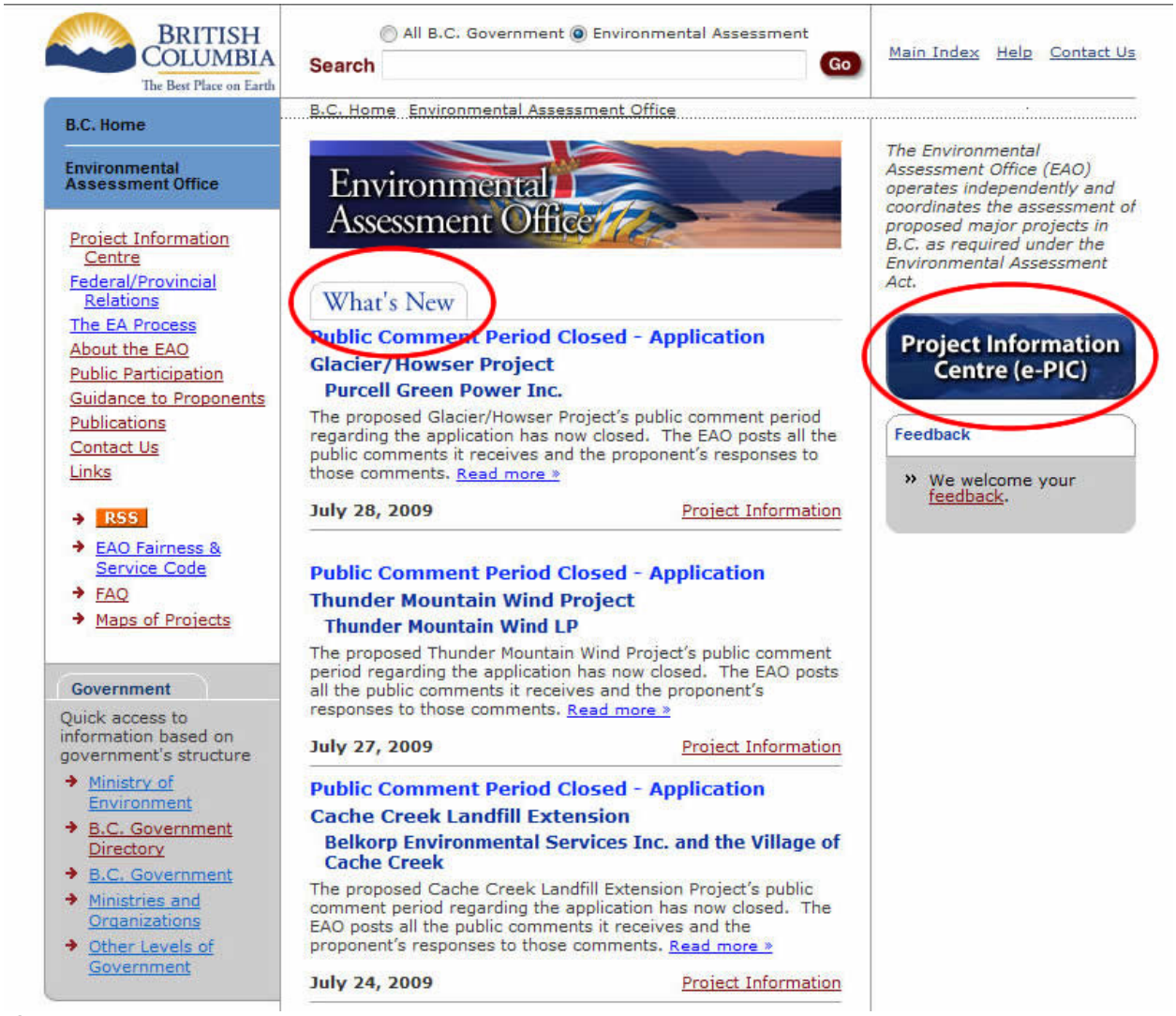

Figure 1. EAO Internet Homepage

[1] You can access *e-PIC* at: http://a100.gov.bc.ca/appsdata/epic/html/deploy/epic_home.html.

I. Part One – Environmental Assessment in British Columbia

A. Introduction to Environmental Assessment

Environmental assessment provides an integrated process for identifying and evaluating a reviewable project's potential adverse effects (environmental, social, health, heritage, and economic) and avoiding or mitigating any such effects where practicable. The process ultimately results in a decision by the responsible ministers regarding whether to issue an environmental assessment certificate, which allows reviewable projects to proceed. Comprehensive and efficient environmental assessments result in well-informed and timely decision-making that supports sustainable development.

Large industrial, mining, energy, water management, waste disposal, food processing, transportation and resort developments typically require an environmental assessment in British Columbia.[2]

More than 100 countries across the world employ environmental assessment as an important component of major project planning and approval. In Canada, the provinces, territories, and federal government all use environmental assessment to assist them to determine whether proposed projects should proceed and, if so, under which terms and conditions.

Participation by government agencies, First Nations, local government, stakeholders and the public is a key element of the environmental assessment.

Opportunities for participation by government agencies, First Nations, local governments, stakeholders and the public is a key element of an environmental assessment. Participants can help to develop strategies to avoid, prevent, or reduce potential adverse effects before the final project design and construction decisions are made.

B. The Environmental Assessment Office

British Columbia is the only Canadian province to have its own dedicated office to undertake environmental assessments. The EAO was established under the *Environmental Assessment Act* in 1995. The *Environmental Assessment Act* gives broad powers to the EAO to conduct environmental assessments and make recommendations to government on whether a proposed project should proceed and under what conditions.

[2] Projects that do not require an environmental assessment under the *Environmental Assessment Act* may still require other permits or approvals.

The *Environmental Assessment Act* eliminated the requirement that each interested ministry or agency have their own separate review process for a proposed project. Instead, the EAO administers and oversees a single integrated process to review proposed major projects in British Columbia. This means that proponents, government agencies, First Nations, local governments, stakeholders and the public have a single environmental assessment contact.

The *Environmental Assessment Act* creates a single integrated process for the review of major projects in British Columbia.

As the agency responsible for overseeing the provincial environmental assessment process, EAO has a number of roles. Some of these include:

- determining if a major project requires an environmental assessment;
- specifying the assessment process to follow;
- ensuring the information required for a proper environmental assessment is provided;
- ensuring access to information;
- providing opportunities for government agencies, First Nations, local governments, stakeholders and the public to comment on the proposed project;
- managing issues and balancing interests;
- carrying out the Province's legal duty to consult and accommodate First Nations' rights and title; and,
- ensuring that all potential environmental, economic, social, heritage, and health effects of a proposed project are considered.

At the conclusion of an environmental assessment process, the EAO prepares a comprehensive assessment report that canvasses all the issues raised by government agencies, First Nations, local government, stakeholders, and the public. It highlights any potential adverse effects associated with a project and considers whether and how those effects can be avoided or mitigated through conditions or commitments from the proponent. The EAO forwards this report, and the EAO's Executive Director's recommendations, to the two responsible ministers. The responsible ministers decide whether or not to approve the proposed project.

If the responsible ministers decide to approve a project, they issue an *environmental assessment certificate*. The responsible ministers may include any conditions they wish in the certificate.

If a project receives an environmental assessment certificate, a proponent must still obtain any other permits or authorizations required under other provincial legislation (e.g. water licences, timber cutting licences, mine permits or waste management permits). Other agencies cannot make other permit decisions relating to a proposed project that requires an environmental assessment certificate, unless it receives an environmental assessment certificate.

1. Working with the Federal Government

About two-thirds of reviewable B.C. projects require environmental assessments under both federal and provincial legislation. The EAO commits to working closely with the Canadian Environmental Assessment Agency and other federal agencies to minimize duplication and maximize efficiencies wherever possible.

British Columbia and Canada have signed a number of agreements focusing on the consistent, timely and efficient use of resources through harmonized reviews. Under these agreements, both governments agree that the proposed projects that would require both a federal and a provincial environmental assessment will undergo a single cooperative assessment process that would meet the legal obligations of each government while maintaining their respective existing roles and responsibilities.

The *Environmental Assessment Act* also allows British Columbia to enter into agreements to accept an environmental assessment undertaken by another jurisdiction as "equivalent" to its own. These agreements avoid the need to conduct duplicate and overlapping environmental assessments, while still allowing specialists from each government to provide substantive input into a comprehensive environmental assessment process. B.C. has used this power to enter into agreements with the federal government regarding a port expansion, interprovincial pipelines, and with a local government regarding a proposed quarry development.[3]

While considerable progress has been achieved in harmonization and the reduction of duplication, the EAO and the Canadian Environmental Assessment Agency continue to develop new and creative ways to meet these goals.

C. The Legal Framework for Environmental Assessment

Environmental assessments in British Columbia occur within a legal framework that includes three main sources:

1. the *Environmental Assessment Act*;
2. regulations under the *Environmental Assessment Act*; and,

[3] For further information regarding these agreements and other federal-provincial information, follow this EAO internet link: Federal/Provincial Relations.

3. common law.

1. Environmental Assessment Act

In December 2002, the government proclaimed the current *Environmental Assessment Act.* It replaced the previous environmental assessment legislation which had been in effect since June 1995. The new legislation provides a streamlined environmental assessment process and reflects the provincial government's commitment to flexible, efficient, and timely reviews of proposed major projects.

Readers who wish to read the full text of the *Environmental Assessment Act* and the associated regulations are encouraged to visit the EAO website.

The *Environmental Assessment Act* has some key elements that are important for proponents or participants.

a) The Environmental Assessment Certificate

Unlike other Acts that establish regulatory regimes or provide broad enabling authorities to a ministry, the *Environmental Assessment Act,* the process it creates and all the decisions enabled within it are focused on a single product - the environmental assessment certificate.

The *Environmental Assessment Act* states that a person cannot undertake or carry on any activity (e.g. construction, operations, etc.) on a reviewable project without first having an environmental assessment certificate. Also, authorizations or approvals must not be provided by other provincial agencies without a valid environmental assessment certificate.

b) Decision-makers

Decision making authority under the *Environmental Assessment Act* rests mainly with the Minister of Environment and the EAO's Executive Director.

Minister of Environment

Under the *Environmental Assessment Act*, the Minister of Environment's powers relate mainly to certificates (granting, suspending, cancelling, extending or re-instating certificates). In addition, the Minister of Environment has the ability to specify the environmental assessment process, if the Executive Director refers the matter to the Minister of Environment for such a determination.

Executive Director

In most cases, the Executive Director determines the assessment process. The Lieutenant Governor in Council appoints the Executive Director. He or she holds a

deputy minister level position within the British Columbia public service. Under the *Environmental Assessment Act*, the Executive Director's powers include determining whether an environmental assessment is required for a particular proposed project, and establishing or modifying the process for that assessment. The Executive Director frequently delegates functions to the EAO staff. In addition, the Executive Director also provides reasons and recommendations to the responsible ministers at the end of the process when the EAO refers a project to the responsible ministers for a decision.

Many of the powers related to managing the environmental assessment process are delegated to the EAO staff responsible for leading the review of specific projects.

c) Compliance

The *Environmental Assessment Act* also details the steps the Minister of Environment may take if a proponent fails to comply with their certificate's terms. The Minister of Environment has broad powers to order that the project's construction or operation cease, either partly or completely, at his or her discretion, until the developer has complied with the certificate's terms. The Minister of Environment may also suspend, cancel or amend a certificate for a variety of reasons. The *Environmental Assessment Act* defines offences and specifies maximum fines and imprisonment times for those offences.

2. *Environmental Assessment Act* Regulations

Like many pieces of legislation, the *Environmental Assessment Act* provides authority for the Lieutenant Governor in Council to pass regulations. Regulations have the same force of law as an act, but they typically relate to more detailed and technical matters and can be amended more easily than an act. The *Environmental Assessment Act* has five related regulations.

a) Reviewable Projects Regulation

The *Reviewable Projects Regulation* identifies the types of projects that trigger an environmental assessment. The EAO refers to these triggers as *thresholds*. For example, a new mineral mine that, during operations, will have a production capacity of $\geq$ 75 000 tonnes/year of mineral ore triggers an environmental assessment.

This regulation includes both new projects and the modification of existing projects. In a few cases it also applies to the decommissioning of existing facilities. Also, even if a project exceeds the regulation's threshold (i.e., it is a reviewable project), the Executive Director may determine that the project does not require an environmental assessment certificate in appropriate cases, as discussed below.

b) Prescribed Time Limits Regulation

This regulation requires that certain stages of the process must be carried out within a specified time. These time limits apply to both the EAO and the proponent's actions.

c) Public Consultation Policy Regulation

This regulation guides how public consultation should occur during the environmental assessment process. It addresses matters such as providing public notice, ensuring access to information, establishing public comment periods, and holding open house forums.

d) Concurrent Approval Regulation

This regulation outlines a process that allows proponents to apply to have other agencies consider applications for provincial permits and authorizations (e.g. a *Mines Act* permit) at the same time an environmental assessment is being undertaken. Although such permits or approvals cannot be issued unless the responsible ministers issue an environmental assessment certificate, this regulation provides for those other decisions to be made within 60 days of the issuance of a certificate when the proponent applies for concurrent permitting.

e) Transition Regulation

This regulation sets out transition rules for projects that have already been granted certain provincial permits and authorizations, but would have otherwise required an environmental assessment when the new Act came into force in 2002.

3. Common Law Guiding the EAO

Common law, also called case law, refers to law developed through court decisions rather than legislation. Judges create and refine the common law when considering previous court cases.

There is a considerable body of common law applicable to the Crown and its relationship with First Nations. These cases stem from section 35 of the *Constitution Act, 1982*, which provides constitutional recognition of aboriginal rights and treaty rights. The EAO must consider and respect these rulings when making decisions under the *Environmental Assessment Act* and its regulations.

Common law guides the EAO in meeting its duty to consult and accommodate First Nations, and in ensuring principles of administrative fairness are met.

While fully examining the common law regarding First Nations consultation is beyond this guide's scope, key cases that guide the EAO include the following:

- *Haida Nation v. British Columbia (Minister of Forests), and*
- *Taku River Tlingit First Nation v. British Columbia (Project Assessment Director).*[4]

In 2004, the Supreme Court of Canada issued its decision in *Haida Nation v. British Columbia (Minister of Forests).* This case related to the transfer of ownership of a Tree Farm Licence in the Queen Charlotte Islands. It centered on whether and how much consultation was required with the Haida Nation when the Crown made a decision under the *Forest Act*. It is an important case that sets out a framework for how government must consult with First Nations when decisions are made in circumstances that could adversely affect asserted aboriginal rights.

In basic terms, the Supreme Court of Canada stated two main points.

1. The Crown must consult First Nations any time it knows of an asserted aboriginal right (including title) and it is considering an action or decision that could adversely affect that right.
2. Determining the consultation's nature and extent depends on two factors:
   (i) the asserted claim's strength, and
   (ii) the extent to which the right may be adversely affected by the government decision or action.

Another important aspect of this case was direction on the proponent's role regarding First Nations consultation. The Supreme Court of Canada stated that First Nations consultation is the government's responsibility, but that it can assign the "procedural aspects" to proponents to support the Crown's duty.

The Supreme Court of Canada held that consultation with First Nations is the government's responsibility, but it can assign the "procedural aspects" to proponents in support of the Crown's duty.

Part Two – The Environmental Assessment Process further discusses this topic.

On the same day that it released the *Haida* decision, the Supreme Court of Canada also released the *Taku River Tlingit First Nation v. British Columbia (Project Assessment Director)* decision. This case dealt specifically with environmental assessment. The Taku River Tlingit First Nation challenged the process culminating in the responsible ministers' decision to issue an environmental

[4] To access full-text versions of these cases, visit this website: http://scc.lexum.umontreal.ca/en/index.html.

assessment certificate. The Supreme Court of Canada concluded that the EAO process had fulfilled the Crown's obligations to consult and accommodate the First Nation.

It is useful to summarize some of the key First Nations consultation principles that the courts have continually reinforced through the common law. These principles guide the EAO decision-makers and should be adopted where possible by proponents when consulting First Nations:

- start consultation as early as possible;
- share all relevant information with First Nations;
- clearly explain proposals and government decisions;
- ensure opportunities for First Nations to provide feedback;
- genuinely consider aboriginal concerns and attempt to find ways to address them; and,
- be respectful, open, reasonable, and responsive.

II. Part Two – The Environmental Assessment Process

Introduction

Although timeframes may differ for any given project, a typical environmental assessment process generally takes 16 to 20 months to complete. Some complex proposed projects may require a longer review period, whereas some relatively simple projects may be assessed in less time.

This section of the guide will explain:

- what happens at each step of the environmental assessment;
- timing of each step;
- how First Nations, the public, and stakeholders are engaged; and,
- unique situations or other considerations.

The Environmental Assessment Process

The EA process consists of both a "pre-application" and an "application review" stage.

The following diagram illustrates these two stages and the related steps. While the process is generally linear, some steps can occur concurrently. In some circumstances, a project can return to an earlier step; for example, if further information is required for an assessment. The following pages further explain these situations.

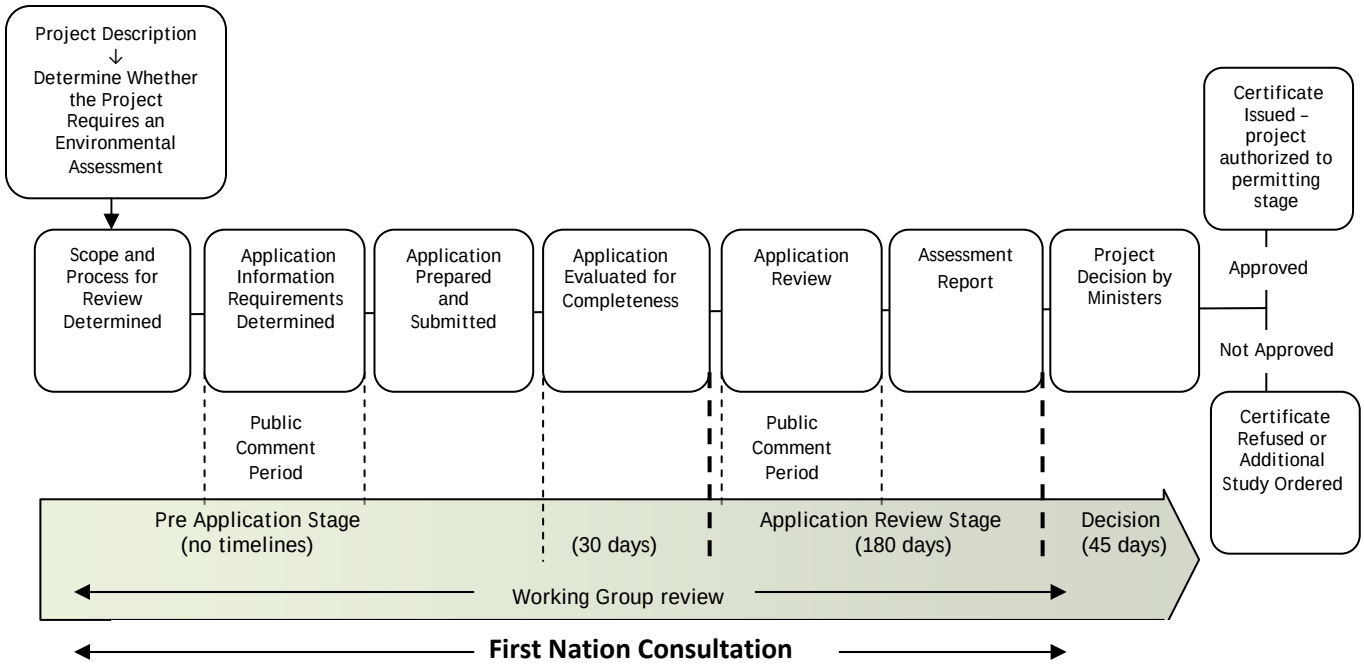

Diagram One: Environmental Assessment Process Chart

A. The Pre-Application Stage

1. Determining if a Project is Reviewable

Before a project enters the environmental assessment process, the EAO first needs to determine if it is reviewable. The *Environmental Assessment Act* provides for three ways for a project to be reviewable.

1. The EAO, guided by the *Reviewable Projects Regulation,* designates the project as reviewable.
2. The Minister of Environment designates the project as reviewable.
3. A proponent requests an environmental assessment for a project that would not normally require an assessment and the EAO agrees and designates the project as reviewable (this is called an "opt-in").

About 95% of all environmental assessments become reviewable through the first option; however the guide discusses each option below.

When a proponent considers developing a major project in British Columbia, they should first contact the EAO to discuss how the *Environmental Assessment Act* may apply to their project. The EAO has staff who act as the main contact for various industry sectors in British Columbia (e.g., metal mining, transportation, energy, etc.). These "sector leads" can speak to proponents about their proposed projects and provide information and guidance regarding the EAO's role and the regulations' applicability. You can access project sector lead information online.

When a proponent is considering developing a major project in British Columbia, they should first contact the EAO to discuss whether the proposed project requires an environmental assessment.

If the proposed project is not reviewable, the EAO will put the proponent in contact with the appropriate permitting agencies to discuss any permits or approvals the project may require.

a) Project Description

Once a proponent believes their project is likely to trigger a provincial environmental assessment or they wish to "opt-in" to the process, they will submit a document to the EAO sector lead called a *project description*. The EAO uses the project description to formally determine whether a project is "reviewable" under the *Reviewable Projects Regulation* and the *Environmental Assessment Act*.

The EAO website keeps an online publicly available database of all projects and important documents. This electronic Project Information Centre (*e-PIC*) is a valuable tool for those interested in reviewing and commenting on projects.

The EAO posts the project description to *e-PIC* once it designates the project as reviewable.

It is important that the project description contains enough information to allow the EAO to determine if it is reviewable. Proponents may refer to the *Guidelines for Preparing a Project Description for an Environmental Assessment in British Columbia* for guidance on writing project descriptions.

Since about two-thirds of all reviewable projects in British Columbia require both provincial and federal environmental assessments, proponents should be aware that the Canadian Environmental Assessment Agency also requires a project description to determine if a proposed project requires a federal environmental assessment. The Canadian Environmental Assessment Agency also requires some additional information beyond that required by the EAO in project descriptions to determine which federal agencies (e.g., Fisheries and Oceans Canada, Transport Canada, Canadian Wildlife Service, etc.) will be involved in the assessment. Proponents should consult the federal *Project Description Guide: British Columbia* on the Canadian Environmental Assessment Agency's website at www.ceaa-acee.gc.ca for more information. Ideally, a proponent prepares a single project description that meets both requirements.

b) Designating the Proposed Project as Reviewable (Section 10 Order)

If the EAO determines that a proposed project is reviewable, it is assigned to a staff project lead. These project leads are Project Assessment Directors or Project Assessment Managers, and they have certain delegated authorities under the *Environmental Assessment Act* to conduct the environmental assessment process. Project leads are the main EAO contact for proponents, government agencies, First Nations, local governments, stakeholders, and the public for a specific reviewable project.

Project leads are the main EAO contact for proponents, government agencies, First Nations, local governments, stakeholders and the public for a specific reviewable project.

The project lead will issue an order under section 10 of the *Environmental Assessment Act*. This formally specifies whether a reviewable project requires an environmental assessment. The EAO works with the proponent to determine the timing for issuing the order.

When a project lead issues the order accepting the project into the process, the EAO notifies government agencies, First Nations, and local governments. It also posts the order and project description on *e-PIC*, as soon as possible.

For proposed projects undergoing a joint federal review, the EAO and the Canadian Environmental Assessment Agency prepare a joint work plan. This joint work plan outlines detailed and specific timeframes for each step in the assessment process. The work plan's goal is to produce a harmonized review process that adheres to the provincial legislated timeframes.

2. Unique Situations

As mentioned, the majority of reviewable projects that require an environmental assessment enter the process using the steps outlined above. However, the *Environmental Assessment Act* also includes several other options for determining whether or not a project requires an environmental assessment.

a) Minister Designates a Project as Reviewable

The *Environmental Assessment Act* allows the Minister of Environment to designate a proposed project as a reviewable project, even if it does not exceed the reviewable thresholds under the *Environmental Assessment Act*. In order to do so, the Minister of Environment must determine that the proposed project may have significant adverse effects and that it is in the public interest for the project to undergo an environmental assessment.

b) Opt-ins

Where a proposed project does not meet the *Reviewable Projects Regulation* threshold, a proponent may still request that it undergo an environmental assessment. The Executive Director decides whether to accept or reject this request. If a proponent wishes to opt-in to the environmental assessment process, they should contact the relevant EAO sector lead. He or she will provide information about submitting a written application to the EAO indicating the reasons for the request. The EAO will consult the Canadian Environmental Assessment Agency (and other agencies if appropriate) when considering such an application.

c) Assessment Waived

The *Environmental Assessment Act* allows the Executive Director to waive the requirement of an environmental assessment in appropriate cases. The Executive Director may decide this if he or she considers that a reviewable project will not have a significant adverse environmental, economic, social, heritage, or health effect. The

Executive Director may attach any conditions he or she wishes when waiving an assessment.

3. Scope and Process for Review Determined

a) Working Group Formed

Once the EAO issues the section 10 order, the actual environmental assessment work begins. Generally within days of issuing the order, the project lead will contact First Nations to discuss their participation in the proposed project's environmental assessment.

The project lead will also form a working group. The working group includes representatives of the Canadian Environmental Assessment Agency, federal and provincial government agencies, First Nations, and local governments. When appropriate, officials from neighbouring jurisdictions will also be invited to participate. The working group advises the EAO about issues related to the proposed project's assessment. Later in the process, it plays a vital role by helping to assess the adequacy of any proposed mitigation measures.

The working group advises the EAO about issues related to the assessment of the proposed project and plays a vital role later in the process by helping to assess the adequacy of any proposed mitigation measures.

The proponent is not a formal group member of the working group. However, proponents regularly attend working group meetings to provide information and explain aspects of the project. The proponent is responsible for collecting the majority of the information that will be included in the application for an environmental assessment certificate. The proponent seeks advice and guidance from working group members about the information it should collect and ways to avoid potential impacts and develop strategies to mitigate those impacts when they cannot be avoided.

The EAO encourages proponents to consult First Nations as early in the process as possible.

To facilitate First Nations engagement in the process, the EAO encourages proponents to consult First Nations as early in the process as possible. It advises proponents to contact First Nations regarding a proposed project before the project formally enters the environmental assessment process. The EAO project lead can help proponents identify which First Nations they should contact. First Nations and proponents may also find the

First Nations Environmental Assessment Technical Working Group's website a useful tool.[5] It can be found at www.fneatwg.org.

Proponents should document and summarize all consultations, including the date, time, location, participants, issues and concerns, commitments in response to concerns, sharing of information, changes in project design, or any other relevant information.

b) Procedural Order (Section 11 Order)

For most proposed projects, the EAO project lead will establish the scope, procedures, and methods of the environmental assessment by issuing a procedural order under section 11 of the *Environmental Assessment Act*.[6] The section 11 order directs the proponent on the scope of the project, what parts of their proposed project will be assessed, what effects will be considered in the assessment, and what actions and activities the proponent is responsible for in the assessment. It also sets out required consultation activities and timeframes.

A section 11 order consists of two parts. The first is the order itself, and is unique to the project. It lists the nature of the project, why it requires an environmental assessment, a reference to the involvement of the Canadian Environmental Assessment Agency, and specifies the First Nations that the EAO directs the proponent to consult and report on. The second part of the order is the schedule, which specifies the scope, procedures, and methods by which a review must be conducted.

The EAO will generally prepare a first draft of the section 11 order within a month of receiving the project description, and send it to the proponent and First Nations for comment. The EAO will seek to finalize and formally issue the section 11 orders within another one to two months. Once finalized, the EAO will post the document on *e-PIC*.

Occasionally, unforeseen changes to the proposed project or the review process may require the project lead to change the section 11 order. This may happen when the project's scope changes or the project lead determines a change in the process is required to ensure an effective and timely assessment. Section 13 of the *Environmental Assessment Act* deals with changes to the section 11 order.

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[5] The First Nations Environmental Assessment Technical Working Group "is a multi-disciplinary group of First Nation, provincial and federal government environmental assessment practitioners. [The] group is committed to enhancing First Nations internal capacity to engage effectively in EA processes conducted in British Columbia." [Accessed online at http://www.fneatwg.org/ on September 3, 2009.]

[6] In the less typical circumstance where the Executive Director has referred a project to the Minister of Environment, the minister is responsible for determining the scope, procedures and methods of the environmental assessment of the project.

Where the EAO has delegated the procedural aspects of First Nations consultation by way of the section 11 order, the proponent's role is to explain the project's technical aspects to First Nations; to learn about First Nations' interests, rights, and uses; and, to develop mitigation strategies or accommodation measures to reduce or eliminate impacts to asserted or established aboriginal rights and/or title.

Respecting First Nations consultation, the section 11 order may require the proponent to consult specified First Nations and report back to the EAO. This is frequently an effective and efficient means of ensuring First Nation interests are considered. The proponent's role is to explain the project's technical aspects; to learn about First Nations' interests, rights and, uses; and, to develop mitigation strategies or accommodation measures to reduce or eliminate impacts to asserted or established aboriginal rights and/or title. The EAO will also engage in direct consultations with First Nations as appropriate. This could include, but is not necessarily limited to, the First Nations that the section 11 has directed the proponent to engage with and report back on.

The Crown retains the overall responsibility for the consultation duties owed to First Nations, and the EAO must ultimately assess whether the consultation efforts undertaken by the proponent (at the EAO's direction) and by the EAO directly satisfy that duty.

4. Information Requirements for Application

a) Draft Application Information Requirements (formerly Terms of Reference)

The next step in the environmental assessment process is to specify the information that must be included in the application for an environmental assessment certificate. The EAO does this by issuing a document referred to as the "application information requirements" (formerly referred to as the terms of reference). This is an important document because it identifies the issues to be addressed in the assessment and the information that must be included in the application (e.g., baseline studies, approach to assessing cumulative impacts, etc.). Proponents must pay particular attention to the application information requirements because the *Environmental Assessment Act* does not allow the EAO to accept an incomplete application.

The Application Information Requirements (formerly called the terms of reference) outlines the issues to be addressed in the assessment and the information that the proponent must include in the application.

To develop the application information

requirements:

- the proponent prepares a draft;
- the EAO seeks feedback from the working group, First Nations, and the public. The EAO also obtains public input through posting the draft application information requirements on the *e-PIC* website, issuing an RSS feed to interested parties,[7] specifying a period and process for public written input, and directing the proponent to hold a public open house in one or more locations near the project; and,
- the EAO approves and formally issues the application information requirements document when it is satisfied that the document is complete and appropriate for the assessment to be undertaken.

The application information requirements generally contain the following core elements:

- description of the project, including all key project elements;
- spatial and temporal boundaries of the assessment;
- consultation that will take place;
- project setting and characteristics, including a description of a wide range of baseline studies that the proponent will undertake;
- scope of the assessment, including a list of all potential effects that will be considered;
- methodology for assessing impacts and mitigating effects;
- assessment of the potential significant adverse affects, including proposed mitigation measures and residual effects; and,
- commitment to provide environmental management systems and monitoring plans.

Developing the draft application information requirements is the first formal stage in the

The development of draft application information requirements is the first formal stage in the environmental assessment process where the public can provide input on the project. At this step, the public can:

- **comment on the issues the assessment should examine,**
- **attend public meetings, and**
- **track the process at:**

www.eao.gov.bc.ca.

[7] To receive RSS notifications, visit the EAO's website at: http://www.eao.gov.bc.ca/ and follow the "RSS" link to register.

environmental assessment process where the public provides input on the project. As previously mentioned, while the EAO encourages proponents to engage First Nations and the public early in their project scoping and planning, the section 11 order requires a formal 30 to 45 day public comment period on the draft application information requirements.

Input on the application information requirements should focus on what *issues* should be included in the assessment and the *information* required to address those issues.

Input on the draft application information requirements should focus on the issues that should be included in the assessment and what information is required to address those issues.

All issues raised by government agencies, First Nations, local governments, stakeholders, and the public are tracked by the proponent who must also respond to them. The EAO assesses the adequacy or acceptability of responses. The issues raised and the proponent responses are posted on *e-PIC*.

Proponents may find it useful to look on the EAO website for previously approved Application Information Requirements (previously referred to as terms of reference) for similar projects.

Proponents may find it useful to look on the EAO website for recently approved application information requirements (previously referred to as terms of reference) for similar projects[8]. These may provide useful guidance for the types of studies, assessment methodologies, and approaches that the EAO has found acceptable in the recent past. That said, every project is unique and may require different information to assess its potential impacts.

b) Cumulative Impacts

Many environmental assessment proponents and participants are interested in cumulative impacts analysis. Cumulative impacts are changes caused by activities associated with a proposed project in combination with other past, current, and reasonably foreseeable activities.

The EAO considers cumulative impacts during its assessment of projects through various means, including the following:

- consideration of approved land use plans that designate the most appropriate activities on the land base;

[8] Note that EAO has recently changed the name of the document from the "terms of reference" to "application information requirements" to more accurately reflect the document's nature. Past assessments will still refer to a terms of reference.

- comprehensive baseline studies which set out the current conditions and thereby factor in effects of prior development;
- consideration of potential overlapping impacts that may be occurring due to other developments, even if not directly related to the proposed project; and,
- consideration of future developments that are reasonably foreseeable and sufficiently certain to proceed.

c) Confidentiality

From time to time First Nations or proponents attempt to submit documents to the EAO on a "confidential" basis.

The EAO does not generally accept documents on this basis, as doing so may raise questions about the process' fairness and transparency if the public and other interested parties are not made aware of, and do not have an opportunity to respond to, information that may potentially affect their interests.

There are limited exceptions to this principle, such as an extraordinary and compelling reason why the specific information must be kept confidential. This might include identifying a particularly sensitive cultural site that public disclosure of might be reasonably expected to have significant adverse impacts on a First Nation. It is important to recognize that these are limited circumstances, and the mere fact that information is of cultural importance to a First Nation is not sufficient to warrant departures from the normal principles of administrative fairness and transparency.

Proponents should not agree to keep information provided by First Nations "confidential" without first discussing with the EAO whether there are compelling reasons for which the EAO may accept the information on that basis.

Typically, concerns about disclosing information that First Nations might otherwise wish to be treated as confidential can be addressed by presenting the information in a manner that addresses the environmental assessment's information requirements but avoids the concerns First Nations may have regarding public disclosure. In the above example, this may include describing the information in public documents in a manner that does not disclose a site's specific location. The EAO project leads will work with proponents, government agencies, First Nations, local governments, stakeholders, and the public to develop an appropriate means of collecting and conveying sensitive information. The EAO encourages any party to raise questions regarding confidentiality early in the review process.

5. Application Prepared and Submitted

After the EAO issues the application information requirements, the proponent then proceeds with completing the studies and compiling the information outlined in the application information requirements.

The time required by a proponent to complete an application varies and depends upon a number of factors, including the project's complexity, research and study design, and proponent preparation.

The time a proponent requires to complete an application varies and depends upon a number of factors, including the project's complexity, research and study design, and proponent preparation. Some proponents have years of data when they enter the environmental assessment process, while others may still be in the early stages of collecting information on the project. As a result, some proponents are able to apply to the EAO for an environmental assessment certificate relatively soon after the EAO issues the application information requirements, while other proponents spend a significant amount of time completing their application.

The application must address all the issues outlined in the application information requirements. It will include the proponent's baseline data of the study area as well as the proponent's analysis of the potential environmental, social, health, heritage, and economic effects of the project. Much of the application will focus on the mitigation measures or compensation strategies the proponent is prepared to take to avoid or minimize those significant adverse effects.

A particularly important part of the application is a "table of commitments". This table, which will likely undergo changes during the review of the application, outlines the commitments (e.g., mitigation strategies, monitoring, etc.) that the proponent will make if a certificate is issued. The finalized table of commitments is attached to the environmental assessment certificate.

As part of their application, the proponent must prepare a report indicating the public and First Nations consultation activities that they have completed and how they plan to consult during the review of their application

Once the proponent completes the application, it submits it to the EAO for screening (discussed below). Proponents should be aware of EAO's electronic submission guidelines before submitting their application to the EAO.

a) Unique situation: Concurrent Permitting

The *Environmental Assessment Act* allows proponents to request that the review process for other provincial approvals (e.g., licences and permits) be undertaken at the same time as the environmental assessment. This option can allow for timelier

issuance of required approvals, if the responsible ministers grant an environmental assessment certificate. Where concurrent permitting is requested, the regulations provide that a permitting agency must (with limited exceptions) make a decision within 60 days of the responsible ministers issuing an environmental assessment certificate.

6. Application Evaluated for Completeness

Upon receiving a proponent's application, the EAO screens the application to ensure it contains all the information outlined in the application information requirements. The EAO assesses the adequacy of the proponent's plans for engaging with First Nations and for public consultation. If the application does not contain all the information set out in application information requirements, the EAO cannot accept it. The EAO has a maximum of 30 days to complete its screening, and will involve the working group and First Nations.

The EAO must complete its evaluation of the application's completeness within 30 days of receiving the application.

At the same time the evaluation is being completed, the project lead completes a written evaluation of the adequacy of the public and First Nations consultation activities that the proponent has conducted or proposes to conduct.

If the EAO identifies any deficiencies in the application, the proponent must address them and then revise and resubmit the application. In those situations where there are small errors of omission, these changes can often be completed within the 30-day period, while in other cases the proponent may have to collect additional information and resubmit the application for evaluation.

If the application does not contain all the information set out in the application information requirements, the EAO cannot accept it.

Where possible, the EAO encourages the use of electronic copies of applications for evaluation by working group members, given that applications can consist of thousands of pages of information. The EAO may also request the proponent to provide written copies of the application to First Nations. The EAO does not post the application on *e-PIC* until the screening is complete and the application is formally accepted.

a) Additional Consideration: Inactive Projects

Some projects that enter the environmental assessment system become inactive, usually because the proponent changes plans and decides to discontinue or delay efforts to move the project forward. This can happen when the EAO advises a

proponent that a project is unlikely to receive a favourable recommendation to the responsible ministers, based on the information provided to date and the assessment of potential significant adverse effects after mitigation.

Once the EAO specifies the application information requirements, the proponent has three years to submit its application. If the EAO does not receive an application within that time period, the EAO can suspend or terminate the assessment. Monitoring this time period is the proponent's responsibility. If a proponent is nearing the end of their three year period and still intends to submit an application, it should write the project lead and declare its intention to pursue the project. The letter should include a specific plan to address the delays by a specified date. If a proponent can demonstrate that it has taken reasonable efforts to fulfill its requirements under the assessment process and/or there are good reasons for the delay, the EAO may consider extending the time limit.

Once the EAO specifies the application information requirements to the proponent, it has three years to submit an application for review.

B. Application Stage

1. Application Review

Once an application is accepted, the EAO has a maximum of 180 days to complete its review. This time limit begins when the EAO has notified the proponent that the application has been accepted for review and the proponent has provided all the requested application copies. The EAO will also require the proponent to distribute copies to other review participants, including the working group and First Nations.

The EAO has a maximum of 180 days to complete its application review.

During the application review stage, the public is provided a second opportunity to provide input on the project.

- Once the EAO accepts an application, it immediately posts it on the *e-PIC* website so members of the pubic and interested parties can review the document. The application is also placed in local libraries near the proposed project's location.
- A short time after the application is placed on *e-PIC*, the EAO initiates a public comment period, typically between 45 to 60 days.
- One or more EAO-led open houses are held during the comment period, typically in the same communities where a public open house was previously held on the application information requirements. During these open houses, members of the public have an opportunity to review the application, provide comments, and ask questions of the EAO and the proponent.

The application review is the second stage in the environmental assessment process where the public can provide input on the assessment. At this step, the public can:

- **attend public meetings,**
- **review the application and comment on it, and**
- **track the process at:**

www.eao.gov.bc.ca.

It should be noted that while open houses are held in communities in proximity to the proposed project, comments are invited and received from all interested parties and individuals throughout the province.

All written comments that are received during the public comment period, whether through the EAO website, faxed to the EAO office, emailed, or received from response sheets at open houses, are shared with the proponent and posted on the *e-PIC* site. The EAO does not post verbal comments received at open houses nor the proceedings from

these events. The EAO captures the issues identified in verbal comments provided at open houses and provides them to the proponent for inclusion in the issues tracking table. As with the application information requirements stage, the proponent must ensure it records all the comments from the public, agencies, and First Nations in tracking tables. The proponent must include in this table its proposed response to each issue raised, which may involve clarifications of information in the application or further commitments that the proponent plans to take to address the issues or concerns raised. The EAO typically requires this tracking table within two to three weeks of the public comment period closing. Once complete, the EAO posts it on *e-PIC*.

The proponent is expected to keep detailed tracking tables that show comments and concerns from the public, First Nations and the working group, and which indicate how the proponent proposes to address or respond to those comments or concerns.

During the 180-day application review stage, the working group plays a key role. Specifically, the EAO will arrange and chair working group meetings and technical sub-group meetings to deal with specific issues (e.g., fisheries, water quality, etc.) as necessary. The proponent attends the meetings, where appropriate, to discuss substantive issues. In this stage of the process, EAO staff work to facilitate consensus among working group members and the proponent on issues or concerns that have been identified by the working group members, First Nations consultation, or the public. Such consensus can often be achieved through:

- discussion and information exchange,
- the development or modifications of proponent commitments, and
- potential modifications to the proposed project itself.

EAO staff also seek to ensure that the EAO has the benefit of the working group's expertise and perspective to help inform its assessment of potential adverse effects for any issues for which consensus is not achieved between the working group and the proponent.

While the EAO frequently encourages First Nations to bring their interests and concerns to the working group for consideration, the EAO will also engage in separate consultations with First Nations in cases where a First Nation declines to participate on a working group or where the EAO otherwise determines that such consultation should be undertaken.

a) Unique Situation: Suspending the Review

The EAO may suspend the 180-day application review time limit. This can happen only if the proponent requests a suspension or if the EAO requires additional information to complete the assessment. The maximum time the EAO may suspend a review is three years. During the time suspension, the EAO, proponent, working group, and other interested parties can continue to work to identify and address issues.

2. The Assessment Report

The EAO begins drafting the assessment report during the 180-day review period. The report documents the assessment's findings, including the extent to which concerns have been addressed and whether any issues remain outstanding. The EAO shares its draft assessment report with the proponent, the working group, and First Nations, and seeks their input. The EAO typically provides three weeks for such comment.

The assessment report sets out EAO's findings and conclusions as well as the result of consultations with First Nations.

The assessment report also contains information regarding First Nations consultation, including an explanation of whether and for what reasons the EAO has concluded the Crown's duty to consult and accommodate has been met.

In any case where a First Nation does not agree with the draft assessment report's conclusions, the EAO offers the First Nation an opportunity to prepare a submission that the EAO can provide directly to the responsible ministers when it submits the assessment report.

In addition to the assessment report, the EAO provides the responsible ministers with:

- recommendations from the Executive Director (with reasons) as to whether to issue an environmental assessment certificate, and
- a draft environmental assessment certificate (in the event the responsible ministers decide to issue it).

The draft environmental assessment certificate includes schedules that specify the details according to which the project must be designed and constructed, and the commitments the proponent has made to address concerns raised through the environmental assessment process. It is common for an environmental assessment certificate to have over 100 commitments. All of the requirements of these schedules form the certificate's conditions and are legally binding on the proponent, if the responsible ministers issue the certificate. The draft certificate also contains periodic reporting requirements, and specifies a deadline by which the proponent

must substantially start the project. That deadline is five years from the date the responsible ministers issue the certificate.

A proponent has five years to substantially start a project after the responsible ministers issue a certificate.

3. Ministers' Decision

Upon completing and assembling the materials referenced above, the Executive Director submits them to the responsible ministers for decision – the Minister of Environment and the other minister responsible for that reviewable project category. For example, the decision on a proposed mine would be made by the Minister of Environment and the Minister of Energy, Mines and Petroleum Resources. Where the proponent for a project is a government ministry, for example the Ministry of Transportation and Infrastructure, the decision is made by the Minister of Environment and an alternate minister. The responsible ministers and their alternates are established by Order in Council and can be found on the EAO website.

The responsible ministers have 45 days to make a decision on the environmental assessment certificate.

After the responsible ministers receive the assessment report and related documents, they have 45 days to make a decision. They must consider the assessment report and the documents that accompany it, and may also consider any other matters they determine are relevant to the public interest when they make their decision. A key factor the responsible ministers will consider is whether the Province has satisfied its legal duty to consult with, and to the extent appropriate, accommodate First Nations.

When making their decision, the responsible minsters have three choices. They must either:

1. issue an environmental assessment certificate with any conditions they consider necessary,
2. refuse to issue the certificate, or
3. require further study or assessment.

Once the responsible ministers make a decision, the EAO notifies the proponent, government agencies (including provincial permitting agencies), and First Nations of the decision. Then, in accordance with the regulations, the EAO posts the responsible ministers' decision, along with the assessment report, the Executive Director's

Once the responsible ministers issue a decision, the EAO posts it on *e-PIC*, along with the assessment report, the Executive Director's reasons and recommendations, and the environmental assessment certificate, if issued.

reasons and recommendations, and the environmental assessment certificate, if issued, on *e-PIC*. The EAO also posts a notice on its internet homepage under the "What's New" section.

If there is federal involvement, the EAO will coordinate any announcements with the federal agency.

C. Post-Certification

During an environmental assessment, the EAO establishes procedures to ensure a smooth transition to post-certification permitting and other follow-up activities. The EAO may hold a post-environmental assessment process meeting with the proponent and permitting agencies to review the certificate's conditions and commitments, the project status, and permitting requirements. A lead ministry may then assume responsibility to act as the proponent's primary point of contact and coordinate permitting activities.

Once the post-certification process is underway, other agencies will begin to consider the more detailed permits and authorizations the project requires. Consistent with provincial consultation guidelines and common law, these agencies must also ensure the Crown's duty to consult First Nations is discharged in respect of their decisions. The EAO works with the permitting agencies to ensure that they understand and have the benefit of consultations already undertaken by the EAO through the environmental assessment process. Permitting agencies are encouraged to take account of this consultation work to avoid duplication of effort, but at the same time they remain responsible for determining whether and when the duty of consultation has been addressed in relation to their decisions. The permitting agencies can rely on consultation undertaken by the EAO, as documented in the assessment report, and complement this with additional permit-specific consultation as necessary.

During an environmental assessment, the EAO establishes procedures to ensure a smooth transition to post-certification permitting and other follow-up activities.

1. Concurrent Permitting

As noted earlier, because there is often considerable overlap between matters considered through the environmental assessment process and subsequent permitting, the *Environmental Assessment Act* allows applicants to apply for "concurrent permitting". In any case where a proponent requests concurrent permitting, the *Environmental Assessment Act* provides that the relevant permitting agencies must,

within 60 days of the issuance of an environmental assessment certificate, do one of the following:

- issue the approval;
- refuse to issue the approval, indicating the reasons for the refusal; or,
- specify a later date on which the proponent may expect a decision, indicating the reasons for the postponement.

2. Amending the Certificate

From time to time, proponents that have received an environmental assessment certificate wish to have the certificate amended. This may occur, for example, if the project is sold to a new owner or if the project design requires an unanticipated change. Any such applications for an amendment must be submitted to the Executive Director in writing. Both the Minister of Environment and the Executive Director have the power to amend a certificate, upon application by the certificate holder.

Before submitting an amendment application, the EAO encourages proponents to speak with the relevant EAO sector lead to clarify the type of information that the EAO requires the application to provide. This may vary depending on the nature of the amendment being sought.

When the EAO receives an amendment application, the Executive Director will establish a process for considering the application. This may vary depending on the application's nature, as amendment requests range from administrative matters, such as changing the name of the certificate holder to a subsidiary company, to redesigning substantial elements of the project. Where appropriate, the process will involve consulting with working group members and First Nations. The Executive Director may also require the proponent to respond to and propose further commitments regarding issues that arise from the amendment application. In addition, the Executive Director may require some form of public consultation in relation to an amendment application, but again this will vary based on the nature of the proposed change and other relevant factors, such as the degree to which the public and interested parties have already been engaged regarding the amendment request.

Once the EAO gathers all the relevant information, the Executive Director reviews the application and related information and may either make a decision, or refer it to the Minister of Environment for a decision.

In any case where a decision is made to amend a certificate, the Executive Director or the Minister of Environment may attach terms and conditions he or she considers necessary.

3. Compliance and Enforcement

The law requires the holder to comply with the environmental assessment certificate's terms. The *Environmental Assessment Act states* that no one may construct or operate a reviewable project except in accordance with a valid environmental assessment certificate. Compliance is also a key part of the environmental assessment process itself, as a certificate typically contains requirements for ongoing monitoring, filing of reports and other measures to help ensure the proponent constructs and operates the project according to the certificate and all related requirements and commitments.

The EAO obtains information regarding compliance (or non-compliance) through various means.

- Proponents prepare periodic compliance reports as a condition of the environmental assessment certificates, which the EAO posts on its website.
- The EAO requests that other relevant regulatory agencies draw to the EAO's attention any issues of potential non-compliance with an environmental assessment certificate which they may become aware of in the course of administering their own related mandates.
- The EAO responds to concerns or complaints from members of the public, stakeholders, local governments, and First Nations.
- The EAO may undertake inspections where appropriate.

In any case where it appears that a proponent may be in non-compliance with an environmental assessment certificate or the *Environmental Assessment Act*, EAO staff has a number of options. These options will generally be undertaken sequentially as part of a progressive enforcement approach, but the EAO may in appropriate cases move directly to one step without completing all prior steps.

a) Contact the certificate holder who appears to be in non-compliance and seek to achieve or ensure compliance through education and discussion.

b) Write a formal warning letter to the certificate holder.

c) Recommend the Minister of Environment order the certificate holder to cease and desist, accompanied by a Supreme Court Order, or compliance agreement, where appropriate.

d) Recommend that the Minister of Environment issue an order to suspend or cancel a certificate.[9]

[9] *Environmental Assessment Act*, s. 37.

4. Certificate Extension

An environmental assessment certificate specifies that the proponent must have substantially started a project within five years. If the proponent substantially starts the project within five years, the certificate remains effective for the project's life (subject to the Minister of Environment's power to cancel or suspend a certificate due to non-compliance).

If the proponent fails to substantially start the project within five years, it may apply to the EAO for a maximum five-year certificate extension. An extension may be granted only once.

The term "substantially started" is not defined in the *Environmental Assessment Act.* The Minister of Environment ultimately determines whether the proponent substantially started the project. In making a recommendation to the Minister of Environment, the EAO considers each situation on a case-by-case basis and considers all relevant factors and questions, such as:

- Has there been a significant investment of time, effort, and resources to physically develop one or more main project elements?
- Does the activity amount to a significant or important step to develop the overall project, or is the activity considered ancillary, secondary, or temporary?
- Would the proponent have undertaken the activity regardless of the project?

To obtain a certificate extension, the proponent should contact the EAO well in advance of, and at least 90 days prior to, the certificate's expiry date. The relevant sector lead will discuss the extension process and the required information with the applicant. This will typically result in directions to write the Executive Director to request an extension, and in doing so to include information addressing the following matters:

- why an extension is being sought,
- information regarding the efforts to progress the project,
- reasons why the proponent was unable to substantially start the project, and
- plans to progress the project within the requested extension period.

The Executive Director will establish the process for considering extension requests and this will typically include consulting relevant agencies and First Nations.

EAO Contact Information

If you have any questions or comments about the assessment process, the EAO's services, or require additional information, please contact us at:

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