

Inspections with EAO Compliance and Enforcement – A Guide for Indigenous Nations

VERSION 1.0

FEBRUARY 28, 2020



EAO

Environmental
Assessment Office

INSPECTIONS WITH EAO COMPLIANCE AND ENFORCEMENT

A GUIDE FOR INDIGENOUS NATIONS

1.0 PURPOSE

To support the reconciliation objectives of the *Environmental Assessment Act* (Act), the Environmental Assessment Office (EAO) Compliance and Enforcement Branch (C&E) wishes to enhance the transparency of compliance oversight by engaging with Indigenous Nations in the conduct of compliance and enforcement activity within their traditional territories and treaty lands through enhanced information sharing and, where desired by Indigenous Nations, attended inspections.

The intent of this document is to summarize the role of the EAO in the management of major projects within British Columbia and propose how C&E and Indigenous Nations may be able to work together on inspections of these projects.

2.0 THE ENVIRONMENTAL ASSESSMENT OFFICE

If a proposed project within British Columbia meets or exceeds the thresholds specified in the [Reviewable Projects Regulation](#), the Act requires it to undergo an Environmental Assessment (EA) prior to construction. EAs are conducted by the EAO, a neutral regulatory agency within the provincial government. During an EA, the EAO seeks input from Indigenous Nations, proponents, the public, consultants, and all levels of government to assess the potential environmental, economic, social, heritage and health effects that may occur during the life of a project. This information is used to develop measures to prevent or reduce adverse effects from the project.

The EAO follows a clearly defined process under the Act to conduct EAs. The findings are detailed in an Assessment Report. Once complete, the Assessment Report is reviewed by the Minister of Environment and Climate Change Strategy and the Minister responsible for the sector in which the project falls (e.g. a mining project would be referred to the Minister of Energy, Mines and Petroleum Resources) and they decide on whether the project should proceed. If a decision to proceed is made, an Environmental Assessment Certificate (EAC) is issued. Sometimes a project is exempted from the requirement to undergo an EA, and in that case an Exemption Order is issued. EACs and Exemption Orders are legally binding documents that specify, by attaching conditions and certified project descriptions, how a project may be constructed, operated, and decommissioned.

2.1. EAO Compliance and Enforcement Branch

The EAO Compliance and Enforcement Branch is a neutral compliance and enforcement agency tasked with conducting inspections and other activities to determine whether projects are compliant with the requirements of the Act. Ultimately the program is designed to provide assurance to the public and Indigenous Nations that projects regulated by the Act are constructed, operated, and decommissioned in accordance with the EAs conducted for those projects.

C&E conducts inspections to assess compliance with the Act and its regulations, EACs and Exemption Orders. If non-compliance is identified, C&E has a variety of tools available to promote compliance. These tools include:

- Notices of Non-Compliance
- Warnings
- Violation Tickets
- Orders to Prevent, Remedy or Cease

- Monetary Penalties
- EAC suspension or cancelation
- Prosecution
- Restorative Justice

It is important to be aware that the Act does not provide EAO or Representatives the authority to stop or detain people, demand identification, or seize equipment. Should this be necessary, the C&E Officer may request the assistance of the RCMP, Conservation Officer Service, or other agency with this authority.

Section 49(7) of the Act grants C&E officers the authority to bring on inspection anyone who is necessary for the inspection. Section 49(3) states that inspections can occur for “*any purpose related to the administration of this Act or the regulations*”, which means that their purpose can be broader than just assessing compliance. In most instances, this grants Indigenous Nations that have the project within their traditional territory or treaty lands the right to attend inspections with C&E.

See the [Compliance and Enforcement Policy and Procedures](#) document for more information on how EAO C&E operates.

3.0 EAO’S INSPECTION PROCESS

The EAO’s C&E teams often include both C&E Officers and Indigenous Liaison Officers (Liaison Officers). C&E Officers are responsible for the conduct of inspections, while Liaison Officers work with both Indigenous Nations and C&E Officers to ensure that Indigenous Nations are involved in EAO inspections to the greatest extent practicable, and the interests of Indigenous Nations are incorporated into the inspection process.

Prior to inspection, C&E will contact Indigenous Nations to determine their interests and concerns specific to the project in question. This information will guide the planning and conduct of the inspection. Liaison Officers will work with Indigenous Nations to facilitate information sharing and inspection attendance. Regardless of whether Indigenous Nations attend the inspection, C&E will provide them with an inspection summary and inspection report that outline C&E’s findings and any enforcement actions taken. The following sections provide additional detail about the inspection process and Indigenous Nations involvement.

3.1. Notification and Attendance Procedures

To facilitate Indigenous Nation attendance on inspections, EAO C&E strives to adhere to the following procedures:

1. Three weeks prior to inspection:

- The EAO C&E Officer emails the holder of the EAC or Exemption Order (the Holder) notification of the upcoming inspection and asks if they have any specific, valid concerns with Indigenous Nation attendance at the inspection. Details on any required personal protective equipment (PPE) and training are sought.
- Holders have 5 calendar days to email a response to the C&E Officer, the Liaison Officer and eao.compliance@gov.bc.ca.

2. Two weeks prior to inspection:

- If the Holder does not identify specific, valid concerns with Indigenous participation in the inspection, the Liaison Officer emails all Indigenous Nations that have the project within their traditional territory or treaty lands invitations to attend the inspection. Included with the invitation will be a list of required training and PPE and a request to supply the Liaison Officer with details on what the Nation would like to inspect. Indigenous Nations will have 5 calendar days to confirm with the Liaison Officer whether they will be sending a representative on inspection and details on what they would like to inspect.
- If the Holder has identified specific, valid concerns with Indigenous participation in the inspection, the Director of C&E, in consultation with the C&E Officer, the Liaison Officer, and the Indigenous Nation will determine how to proceed.

3. **One week prior to inspection:**
 - The Liaison Officer emails the C&E Officer details regarding Indigenous Nation attendance and items of concern identified by the Nation.
 - The C&E Officer finalizes their inspection plan, incorporating these concerns.
4. **Two days prior to inspection:**
 - The C&E Officer emails the Liaison Officer the inspection plan. It includes details on what is being inspected and meeting times and locations.
 - The Liaison Officer forwards the inspection plan to all Indigenous Nation representatives (Representatives) that are attending the inspection.
5. **On inspection day:**
 - The C&E Officer and Liaison Officer meet with Representatives prior to the inspection to introduce themselves, discuss the upcoming inspection and review the safety plan.
 - During inspection Representatives will be in the company of the Liaison Officer.
6. **At the end of the inspection:**
 - The Liaison Officer solicits input from Representatives to identify items of concern and items that they would like C&E to follow up on. As soon as possible the Liaison Officer emails this information to the C&E Officer for follow-up and inclusion in the inspection summary.
7. **Within 3 days of inspection:**
 - The C&E Officer emails the Liaison Officer the inspection summary.
 - The Liaison Officer forwards the inspection summary to all Indigenous Nations that have the project within their traditional territory or treaty lands.
8. **When the final inspection record is emailed to the Holder:**
 - The C&E Officer copies the Liaison Officer when they email the final inspection record to the Holder.
 - The Liaison Officer forwards the inspection record to all Indigenous Nations that have the project in their traditional territory or treaty lands.

To facilitate the efficiency of inspection, Indigenous Nations are asked to limit their attendance at each inspection to one person per organization. Often there will be multiple nations attending an inspection.

There are times when Indigenous Nation attendance at inspections may not be possible because of reasons such as:

- The logistics of the inspection prohibit others from attending (e.g. limited seating in a helicopter);
- The EAO will be conducting the inspection with little or no notice to both the Holder and Indigenous Nations;
- Specific, valid reasons to limit on-site participation beyond C&E Officers may have been identified by the Holder.

If participation on an individual inspection cannot be facilitated, Indigenous Nations will be provided with the rationale as to why their attendance could not be facilitated by C&E.

3.2. Conduct During Inspection

During inspections all persons under the responsibility of EAO C&E, including Indigenous Nations, must abide by the Code of Conduct outlined below. This will ensure that all inspections are conducted in a safe and professional manner that is fair to all parties involved.

3.3. Code of Conduct

Compliance and Enforcement Officers are required to conduct themselves in a neutral, professional manner during inspections. EAO asks that Representatives conduct themselves the same way. Important elements of conduct during inspections include the following:

- **Professionalism**

Representatives must be respectful in their communication and behavior with all persons.

- **Compliance with Policies, Procedures, and Legislation**

Representatives must adhere to the policies and procedures of their employer and/or Indigenous Nation they represent, as well as this document and the EAO Compliance and Enforcement Safety Policy. They must also comply with all laws and not commit or condone any illegal act or instruct others to do so.

- **Conflict of Interest**

Representatives must remove themselves from situations in which their personal interests, employers and/or Indigenous Nation may benefit, or be perceived to benefit, from their actions. Representatives must immediately bring to the attention of their employer and/or Indigenous Nation and the Liaison Officer any situations where they may be in a real or perceived conflict of interest involving an inspected activity.

- **Confidentiality**

Representatives must protect from unauthorized use and disclosure information that is deemed confidential or sensitive by EAO C&E. Discussions that contain confidential or sensitive information that may be overheard by third parties must be avoided.

- **Trust and Transparency**

Representatives must be open, transparent, and factual in their communications.

- **Discrimination**

Representatives must comply with the *B.C. Human Rights Code* and the *Canadian Multiculturalism Act* and not discriminate by race, religious belief, skin color, gender, mental or physical disability, marital status, ancestry, age, place of origin, family status, source of income or sexual orientation. Representatives must also report to their employer and/or Indigenous Nation and the Liaison Officer any discriminatory actions observed during inspection.

- **Harassment**

Representatives must not engage in harassment, defined as unwelcome conduct, comment, gesture, contact, or intimidating and offensive behavior likely to cause offence or humiliation.

4.0 SAFETY

C&E inspects projects under a variety of challenging and sometimes hazardous conditions. All C&E staff are trained in safe work procedures and conduct themselves pursuant to the EAO Compliance and Enforcement Safety Policy.

Safety is everyone's responsibility and as such everyone on inspection is expected to always operate in a safe manner and report any safety concerns to their supervisor, C&E and the owner of the worksite. The *Workers Compensation Act* states that all employees are obligated to only carry out work for which they are adequately trained and equipped, and all employees have the right to refuse unsafe work without repercussion. At the end of the day everyone wants to go home injury free so if you're not sure that you can do something safely, do not do it!

C&E is responsible for the safety of Representatives during attended EA Act inspections. As such, Representatives must adhere to the Safety Policy of C&E, the safety policies and procedures of their employer and, unless directed otherwise by C&E, the safety policies of the owner or prime contractor of the project being inspected. If an accident occurs, liability is determined by assessing whether the parties involved were diligent in identifying the risks and undertaking measures to eliminate or control those risks. Ultimately, EAO C&E is committed to the safety of C&E Officers, Indigenous representatives and all others present during inspections.

C&E operates in accordance with the legal requirements of the following:

- The [Workers Compensation Act](#) and the [Occupational Health and Safety Regulation](#);
- The [Health, Safety and Reclamation Code for Mines In British Columbia](#); and
- On federal lands the [Canada Labour Code](#).

4.1. Site Access Considerations

Projects can be contentious and EAO strives to ensure that the likelihood of confrontation during inspection is minimized. This can be achieved by adhering to the Code of Conduct and focusing on the primary purpose of the inspection, which is to verify compliance with the Act, its regulations and the applicable EAC or Exemption Order. Personal opinions not relevant to the inspection should not be expressed. Representatives are to avoid confrontations and other potentially unsafe situations. If situations with the potential to increase conflict are encountered, C&E Officers will address them using their training and experience in confrontation management (typically de-escalation and disengagement). Representatives are to refrain from involving themselves in these situations.

4.2. Training

Employers are legally required to ensure that their employees and other workers they are responsible for have the training and tools required to conduct their work safely. As EAO C&E is responsible for the safety of Representatives while on inspection, often Representatives will be required to take specific safety training prior to participating in inspections.

Some courses that may be required are:

- Safety orientations offered by the prime contractor or owner of the worksite
- Occupational First Aid Level 1
- H2S Alive
- Bear Aware

Prior to inspection the Liaison Officer will notify Representatives as to what training is required. Proof of training (e.g. certificates) may need to be provided to C&E upon request.

4.3. Personal Protective Equipment (PPE)

Personal protective equipment such as high visibility clothing, hard hats, gloves, safety glasses and safety boots reduces the likelihood of workplace injury or disease. PPE requirements vary by job description and site and are set by legislation.

Representatives must wear appropriate PPE when participating in inspections with C&E. Unless other arrangements are made, Representatives are responsible for supplying their own PPE, properly maintained and in good working order as per the manufacturer's specifications and regulatory requirements.

The following PPE is required on most sites. Note that PPE must meet the standards specified in the [Occupational Health and Safety Regulation](#).

- Safety (e.g. steel-toed) boots
- Hard hat
- Safety glasses
- Gloves
- High visibility vest
- Long sleeved shirt and pants

In addition, some sites require some or all of the following:

- Hearing protection (ear muffs or plugs)
- Fire resistant coveralls
- Four head personal gas monitor (calibrated/bumped within the past 24 hours) for inspections where poisonous gas may be present

Prior to inspection the Liaison Officer will provide Representatives with a list of required PPE. Failure to have the proper PPE or training may delay the inspection or prevent Representatives from participating in it.

While not listed above, all Representatives must also wear or have access to clothing that's suitable for the working and weather conditions possibly encountered during inspection (e.g. insulated clothing, toque, rain gear, etc.).

5.0 PHOTOGRAPHY/VIDEO

Photography and/or video may be restricted during inspection under very limited and specific circumstances (i.e. security issues or proprietary equipment). Prior to inspection the Liaison Officer will discuss any restrictions on photography or video, and provide the Indigenous Nation a clear rationale, in writing, regarding the scope and rationale of the restriction.

6.0 COSTS

Unless advised otherwise by C&E, Indigenous Nations are responsible for the costs of sending Representatives on inspection. They are also responsible for supplying their own transportation to and from the project, as well as any other equipment they may require.

If out-of-town travel is required, Representatives are to book their own accommodations.

7.0 ADDITIONAL INFORMATION

For additional information on how C&E will work with Indigenous Nations in the conduct of compliance and enforcement, please contact C&E via email at eao.compliance@gov.bc.ca or phone 250-387-0131.