

INFORMATION BULLETIN:

Mitigation Effectiveness and the Environmental Assessment Act

Issued by: The Environmental Assessment Office (EAO)

December 2020

PURPOSE

The purpose of this bulletin is to explain:

- Why section 30, Mitigation effectiveness reports, was added to the *Environmental Assessment Act 2018 (2018)* (the Act);
- What this section allows the Chief Executive Assessment Officer (CEAO) to do and how the CEAO intends to implement section 30;
- How the various participants in an environmental assessment (EA) will be included in mitigation effectiveness; and,
- The benefits, opportunities and outcomes of mitigation effectiveness.

SECTION 30, MITIGATION EFFECTIVENESS REPORTS

BACKGROUND

The Office of the Auditor General conducted an audit of the EAO's monitoring and compliance and enforcement efforts on environmental assessment certificates (EAC) in 2011 with a follow-up report in 2015. The audit resulted in several recommendations, including a recommendation that the EAO's oversight of certified projects be enhanced to ensure potential significant adverse effects identified during the EA are avoided or mitigated.

The EAO has developed a process for mitigation effectiveness monitoring to evaluate if the effects are being avoided or mitigated and included section 30 in the Act to give the CEAO the authority to require mitigation effectiveness reports for certified projects.

MITIGATION EFFECTIVENESS

Section 30 of the Act allows the CEAO to require Holders to report on the effectiveness of mitigation measures in the certificate.

After an EAC is issued, the EAO will review the findings of the Assessment Report to determine which residual adverse effects will be selected for mitigation effectiveness reports. By using the findings in the Assessment Report, the EAO can ensure that concerns raised

Monitoring Data

The goal of the program is to determine the effectiveness of mitigation measures in the EAC. The EAC will contain monitoring requirements for the implementation of mitigation measures. The goal is to use a compilation of these monitoring requirements to determine if the residual adverse effect is being prevented or mitigated as identified during the EA. The EAO does not intend to establish new monitoring requirements through the Section 30 order.

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by Indigenous nations, the Community Advisory Committee, and the Technical Advisory Committee during the EA are considered when selecting the residual adverse effects.

IMPLEMENTATION

Holders under the 2018 Act will be required to submit mitigation effectiveness reports after the EAC is issued; however, at this time the CEAO is not contemplating applying section 30 to EACs issued under the 2002 Act. If the CEAO determines it is appropriate to require mitigation effectiveness reports on an EAC issued under the 2002 Act, the EAO will contact the Holder before issuing an order under section 30 to discuss:

- The residual adverse effects and reporting criteria for them;
- The required monitoring data; and,
- Report frequency.

Table 1 - Current EA Process

Current EA process step	Environmental Assessment (EA) – Mitigations identification	EA – Residual Adverse Effects Identification	Environmental Assessment Certificate (EAC) issued	Outcomes
Current Process				
Prediction of Effects – EA	Mitigations identified during environmental assessment to prevent or reduce effects predicted in the application.	Residual adverse effects (effects that occur after mitigations are applied to effects predicted in the application) are identified in the EA.	Legally binding requirements are developed to prevent or reduce residual adverse effects.	Outcomes are identified during the EA.
Implementation of EAC	Legally binding requirements in the EAC are implemented to prevent or reduce residual adverse effects identified during the EA.			
Compliance and Enforcement	EAO's Compliance and Enforcement Branch determines if the legally binding requirements of the EAC are being implemented (compliance determination).			

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Table 2 - New Mitigation Effectiveness Program

New EA process step	Environmental Assessment Certificate (EAC) issued
New process addition under section 30 of the 2018 Act	
Purpose: S.30 mitigation effectiveness monitoring	<p>Mitigation effectiveness determines if:</p> <ul style="list-style-type: none"> • The EAO can identify and apply consistent mitigation measures across projects to achieve outcomes; • Effects of concern to Indigenous nations, the Technical Advisory Committee, the Community Advisory Committee and the public are occurring; • The outcomes identified during the EA are being achieved; and, • There are effects being caused by outside influences not identified during the EA.
Evaluation: Assessment of mitigation effectiveness	<ul style="list-style-type: none"> • Are there mitigation measures identified through previous mitigation effectiveness reports that can be used? • Are the residual adverse effects predicted in the EA occurring the way the EAO expected they would? • Is the outcome being achieved as shown by mitigation effectiveness monitoring results compared to EA predictions?
Improvement: Current and future EAs	<ul style="list-style-type: none"> • Learnings from mitigation effectiveness reports are incorporated into future EAs and EACs so the EAO can identify and apply consistent mitigation measures across projects to achieve outcomes. • Mitigation effectiveness reports identify if outcomes identified during the EA are being achieved. The EAO and Holder work together to ensure identified outcomes are achieved. If adaptive management does not achieve outcomes, EACs can be amended to modify, add, or remove mitigation measures.

After discussion with the Holder about the selected residual adverse effects, the CEAO will issue an order under section 30 of the Act identifying reporting criteria, monitoring data, and report frequency.

COMPLIANCE AND ENFORCEMENT

It is important to note that mitigation effectiveness differs from compliance and enforcement. Compliance determines if a Holder is compliant with the legally binding requirements of the EAC and issues enforcement action if they are not. Mitigation effectiveness determines if the mitigation measures included in the EAC are avoiding or mitigating the

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potentially significant adverse effects identified during the EA and if the outcomes identified during the EA are occurring. For information on compliance and enforcement, see the EAO's [Compliance and Enforcement Policy and Procedures](#).

Participants

The participants in an environmental assessment include, at a minimum, the proponent, Indigenous Nations, members of the Technical Advisory Committee, the EAO, and members of the Community Advisory Committee, if one is established. The work conducted by these participants during an EA forms the content of the Assessment Report provided to Ministers to decide if an EAC should be issued. The mitigation effectiveness program has been designed to use the information presented in the Assessment Report to determine which residual adverse effects will be selected for mitigation effectiveness monitoring. Depending on the results of mitigation effectiveness monitoring, the participants may be asked by the EAO or the proponent for further input if adaptive management or an amendment is required. See table 3 below for an outline of how participants are involved in the mitigation effectiveness monitoring program.

Table 3 - Involvement of EA Participants in Mitigation Effectiveness

EA Phase	Participant(s)	Involvement
Environmental Assessment	Proponent, Indigenous nations, community advisory committee, technical advisory committee, EAO	Conclusions reached on residual adverse effects during the environmental assessment are included in the Assessment Report.
Environmental Assessment Certificate	Ministers	Reviews Assessment Report and decides whether to issue an Environmental Assessment Certificate.
Section 30, Mitigation Effectiveness Order	Holder, Indigenous nations, community advisory committee, technical advisory committee, EAO, CEO	<ul style="list-style-type: none"> EAO determines which residual adverse effects require mitigation effectiveness monitoring EAO engages with Holder, Indigenous nations, Community Advisory Committee members, and Technical Advisory Committee members, as appropriate, on the proposed content for the order issued under section 30. CEO issues order under section 30 of the 2018 Act requiring mitigation effectiveness monitoring
Mitigation Effectiveness Reports	Holder, EAO, Indigenous Nations	<ul style="list-style-type: none"> Holder conducts monitoring and prepares and submits mitigation effectiveness report to the EAO. The EAO reviews the report and determines next steps. The EAO shares the report with Indigenous nations.
Results of Report	Holder, EAO, Indigenous Nations, the Technical Advisory Committee, and the Community Advisory Committee	Report findings may result in the need for adaptive management or amendments and associated engagement with Indigenous nations, the Community Advisory Committee, and/or the Technical Advisory Committee.

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Benefits, Opportunities, and Outcomes

There are many benefits, opportunities and outcomes associated with mitigation effectiveness. Through a targeted analysis of monitoring data already being collected under the EAC, mitigation effectiveness will provide the following benefits and opportunities:

- Certainty of process: Develop effective mitigation measures that can be applied across EACs to achieve predicted outcomes for common valued components.
- Confidence of outcomes: Greater confidence that outcomes will be as predicted, increasing operational certainty.
- Timeliness: The identification and development of common mitigation measures across projects to increase efficiency of EA processes.
- Focused development of project specific mitigation measures: Identification and development of common mitigation measures will result in a more focused identification of project specific valued components, residual adverse effects and mitigation measures.

In addition to the benefits and opportunities identified above, the program has been designed to achieve the following outcomes:

- Attribution: Did the predicted outcomes for valued components consider the influences on the valued outcomes fairly.
- Fairness: Was it appropriate to ask the Holder to mitigate effects or are there outside influences that should have been considered in the EAC.
- Transparency: Are members of Indigenous nations, the Community Advisory Committee and the Technical Advisory Committee involved in the EA aware of the effectiveness of the mitigation measures and achievement of outcomes.