

Compliance and Enforcement Policy and Procedure

May 2015



Environmental
Assessment Office

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GLOSSARY

Administrative fairness - See definition for [natural justice](#).

Administrative enforcement measure - An action implemented by the Environmental Assessment Office or the Minister of Environment, without involvement of the courts, to resolve non-compliance with requirements established by the [Environmental Assessment Act](#) and environmental assessment certificates. Enforcement measures include advisories, warnings, Orders to cease or remedy, compliance agreements, and suspension, cancellation or amendment of environmental assessment certificates.

Certificate - [Environmental assessment certificate](#).

Certificate holder - A person or an organization that has been issued an environmental assessment certificate, including a corporate entity, the government of Canada, the government of British Columbia, a municipality or regional district, another province, another jurisdiction, or an Aboriginal group.

Certified project description - The legally-binding description of the project, including all of the project components and their locations with any required constraints. A document that describes “what” is being certified by an environmental assessment certificate (i.e., the components of the project). By comparison, certificate conditions describe “how” the project will be implemented. The certificate holder must design, build, operate and decommission (if applicable) the project in accordance with both the certified project description and certificate conditions. Most certificates issued after June 2012 have certified project descriptions.

Compliance - Conformity with requirements established by the *Environmental Assessment Act* and environmental assessment certificates.

Compliance management plan - Outlines how provincial government agencies will oversee the certificate holder’s compliance with conditions of an environmental assessment certificate. The plan is developed by the Environmental Assessment Office in collaboration with partner agencies and some Aboriginal groups after a project is certified. It is a ‘living’ plan with the Environmental Assessment Office updating it over the life of the project.

Conditions - Certificate conditions describe “how” the project will be implemented. Conditions are legally-binding requirements that are set out in an environmental assessment certificate, and to which the certificate holder must adhere throughout the life of the project. Some of the conditions are procedural requirements common to all certified projects; others are project-specific and intended to prevent or reduce adverse impacts to the [five pillars](#) and/or asserted or proven Aboriginal rights. Conditions were formerly called commitments; some older environmental assessment certificates still use this term.

Enforcement measure - An action pursued by the Environmental Assessment Office or the Minister of Environment to resolve non-compliance with requirements established by the *Environmental Assessment Act* and environmental assessment certificates. These include [administrative](#) and [judicial enforcement measures](#).

Environmental assessment - A legislated process for reviewing proposed major projects in British Columbia to assess their potential environmental, economic, social, heritage and health effects and to

ensure that the concerns of the public, Aboriginal groups, interested stakeholders and government agencies are considered. The process is required by the *Environmental Assessment Act* and is managed by the Environmental Assessment Office.

Environmental Assessment Act - The legal framework for British Columbia's environmental assessment process for proposed major projects. The *Environmental Assessment Act* is supported by several regulations, as well as a variety of policy, procedural and technical guidelines.

Environmental assessment certificate - A certificate issued to a proponent when the Minister of Environment and one other Minister approve a project. The environmental assessment certificate allows the project to proceed to permitting and other authorizations. The certificate sets out legally-binding requirements to which the certificate holder must adhere throughout the life of the project.

Environmental Monitor – An environmental specialist, typically a Qualified Professional retained by a certificate holder to:

- › Oversee the implementation of mitigation measures required by the regulatory community to avoid or minimize the potential adverse effects of a project;
- › Identify and oversee the implementation of additional strategies to minimize and mitigate the potential adverse effects of the a project;
- › Observe, record and monitor the impacts of a project; and
- › Verify compliance with regulatory requirements.

Exemption - A reviewable project may be exempted from the requirement for an environmental assessment certificate if the Executive Director (a statutory decision maker appointed under Section 3 of the *Environmental Assessment Act*) considers that the project will not have significant adverse environmental, economic, social, heritage or health effects, taking into account practical means of preventing or reducing to an acceptable level any potential adverse effects of the project. An exemption may have conditions attached.

Five pillars - The five broad areas of impact outlined in the *Environmental Assessment Act* that the Environmental Assessment Office considers (in addition to potential impacts to asserted or proven Aboriginal rights) when reviewing a project: environmental, social, health, heritage and economic. Each condition of an environmental assessment certificate relates to one or more of these pillars or asserted or proven Aboriginal rights.

Independent environmental monitor - Similar to an environmental monitor, an independent environmental monitor is an environmental specialist, typically a Qualified Professional, who is retained by a certificate holder as required by certain environmental assessment certificates. An independent environmental monitor verifies the work of the environmental monitor and reports findings directly to government.

Inspection - Administrative (desk-based) or field-based activities undertaken to verify compliance with the environmental assessment certificate for a project or the *Environmental Assessment Act*. Inspections may be used to determine compliance with certificate requirements during any phase of the project, including conditions that are outside of a project's current time frame (e.g., construction level conditions during operations).

Investigation - The collection, examination and documentation of information and evidence to determine if a non-compliance exists. An investigation begins when the Officer suspects there may be a non-compliance. Investigations may be initiated in response to a complaint, review of compliance self report, inspection or other means. Investigations may relate to certificate requirements that are outside of a project's current time frame (e.g., construction level conditions during operations).

Joint inspection - When two or more agencies conduct an inspection together to share knowledge and follow up on compliance issues of mutual concern.

Judicial enforcement measure - An action taken by the courts to resolve non-compliance with requirements established by the *Environmental Assessment Act* and environmental assessment certificates. Enforcement measures include Supreme Court Orders and prosecution. Under Section 46 of the *Environmental Assessment Act*, a court proceeding for an offence may not be commenced more than three years after the facts on which the proceedings are based first come to the knowledge of the Minister.

Minister - The Minister responsible for the administration of the *Environmental Assessment Act* (currently the Minister of Environment).

Natural justice - The duty to act in good faith and without bias in making a statutory decision; to give each party an opportunity to know the case against the party and to provide a response; and for only the person who hears the case to decide it.

Project - [Reviewable project](#).

Proponent - A person or an organization that proposes a reviewable project, including a corporate entity, the government of Canada, the government of British Columbia, a municipality or regional district, another province, another jurisdiction, or a First Nation.

Qualified Professional - An applied scientist or technologist specializing in a relevant applied science or technology including, but not necessarily limited to, agrology, forestry, biology, engineering, geomorphology, geology, hydrology, hydrogeology, or landscape architecture. A qualified professional must be registered in British Columbia with the appropriate professional organization, and acting under that association's Code of Ethics and subject to disciplinary action by that association. He or she must also be someone who, through demonstrated suitable education, experience, accreditation and knowledge relevant to the particular matter, may be reasonably relied on to provide advice within his or her area of expertise.

Reviewable project - A project that is required to undergo an environmental assessment under the *Environmental Assessment Act*. Reviewable projects cannot proceed without an environmental assessment certificate or an exemption.

Table of Conditions - A list of legally-binding requirements called '[conditions](#)' that are set out in an environmental assessment certificate, and to which the certificate holder must adhere throughout the life of a project.

ACRONYMS

C&E	Compliance and Enforcement
CPD	Certified Project Description
CMP	Compliance Management Plan
EA	Environmental assessment
EAA	<i>Environmental Assessment Act</i>
EAC	Environmental assessment certificate
EAO	Environmental Assessment Office
EM	Environmental Monitor
FLNR	Ministry of Forests, Lands and Natural Resource Operations
IEM	Independent Environmental Monitor
MEM	Ministry of Energy and Mines
MOE	Ministry of Environment
OGC	Oil and Gas Commission

INTRODUCTION

The Environmental Assessment Office (EAO) administers the review of proposed major projects in British Columbia. Under the authority of the *Environmental Assessment Act (EAA)*, projects may be issued an environmental assessment certificate (EAC) with legally-binding requirements.

EAO is responsible for verifying compliance with the EAC throughout the pre-construction, construction, operations and, if applicable, decommissioning phases of a project.

To ensure that all requirements are clear and enforceable, they are now set out in two schedules to the certificate:

- › **Schedule A - Certified Project Description (CPD)** – The legally-binding description of the project, including all of the project components and their locations with any required constraints. The document that describes “what” is being certified by an environmental assessment certificate (i.e., the components of the project).
- › **Schedule B - Table of Conditions¹ (TOC)** – Certificate conditions describe “how” the project will be implemented. Conditions are legally-binding requirements that are set out in an environmental assessment certificate, and to which the certificate holder must adhere throughout the life of the project.

If a ‘proponent’ successfully obtains an EAC, they become a ‘certificate holder.’ After a certificate is issued, a certificate holder may not vary from any of these requirements without an amendment to the certificate. Certificate requirements may be added, deleted or modified by the decision maker through the amendment process.

This document is a guidance tool. It is not legal advice and it does not restrict the professional judgment, discretion and autonomy exercised by EAO Compliance Officers, the Associate Deputy Minister or the Minister in carrying out their duties.

¹Conditions were formerly called commitments; some older certificates still use this term.

PURPOSE OF THIS DOCUMENT

This document provides guidance for EAO Compliance and Enforcement (C&E) Officers and partner agencies, as both a reference tool for experienced Officers and a training guide for those who are new to the enforcement of EACs.

Use of this document by C&E Officers helps ensure:

- › Understanding of EAO's processes for setting requirements, managing compliance oversight and responding to non-compliance;
- › Selection of the most appropriate enforcement measure for non-compliance;
- › Predictability and consistency in EAO's response to non-compliance; and
- › Consistency in enforcement practices across British Columbia's natural resource sector.

This document also provides interested parties such as proponents, certificate holders, Aboriginal groups and the public with an understanding of EAO's approach to C&E.

EAO COMPLIANCE AND ENFORCEMENT PROGRAM

If an EAC is issued, the certificate holder² must comply with the legally-binding CPD and the certificate conditions. EAO, in collaboration with its partner compliance agencies, verifies that these requirements are met and, when necessary, takes enforcement action to address non-compliance.

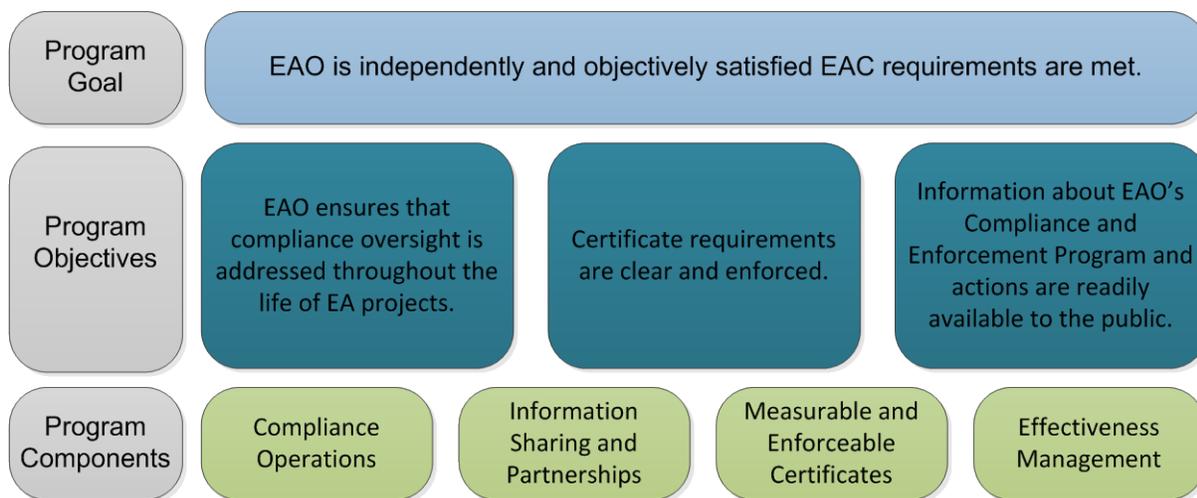
This section provides an overview of the EAO Compliance and Enforcement Program, including areas of collaboration with partner agencies and the principles that guide all EAO compliance work.

Program Overview

The overall goal of the EAO Compliance and Enforcement Program is for EAO to be independently and objectively confident that certificate conditions are being met. An overview of the program components and objectives that support the achievement of this goal is provided in [Figure 1](#). There are four core elements to EAO's Compliance and Enforcement Program:

- › Compliance Operations: field and administrative inspections, complaint review, investigations, compliance self-report reviews, enforcement etc. to promote compliance and enforce legally binding EACs;
- › Information sharing, outreach and agreements: with partner agencies and Aboriginal groups;
- › Measurable and enforceable EACs: contributing to the development of conditions and certified project description; and
- › Effectiveness management: continuous improvement of environmental assessments and compliance oversight.

Figure 1 - EAO Compliance and Enforcement Program



² While proponents may also be out of compliance with the *EAA*, the majority of EAO C&E's compliance oversight relates to certificate holders. As such, this policy focusses on certificate holders rather than proponents.

Examples of compliance activities undertaken by EAO include:

- › Assisting in developing conditions and certified project descriptions (CPDs) to test that they are measurable, enforceable and effective.
- › Developing compliance management plans (CMPs) for certified projects.
- › Overseeing self-reporting by certificate holders, as well as monitoring by third parties.
- › Responding to and assessing complaints.
- › Providing information to Aboriginal groups and the public about EAO's compliance program.
- › Conducting administrative and field inspections, and investigations.
- › Taking enforcement action in cases where non-compliance has been identified.
- › Each of these activities is explained in greater detail in later sections.

Working with Partner Agencies and Aboriginal groups

Working closely with partner agencies is key in EAO's delivery of its C&E Program. EAO C&E Officers work with Compliance Officers, permitting staff and subject matter experts in those agencies. Other regulatory bodies require permits or other authorizations for a project after a certificate is issued, and the EACs may contain conditions that pertain to subsequent authorizations. Consequently, once a project is certified, EAO and partner agencies communicate regularly to clarify compliance roles and responsibilities. This includes working together to develop CMPs for certified projects.

EAO works with other agencies to enhance efficiency and effectiveness. Depending on the circumstances of a particular project (including geographic location, type of project and nature of the non-compliance), EAO Compliance Officers may request that another agency assist with or lead compliance activities. EAO has agreements with the BC Oil and Gas Commission (OGC) and the Compliance and Enforcement Branch of the Ministry of Forests, Lands and Natural Resource Operations (FLNR) to guide their collaboration when managing the compliance of certified projects. As of 2014, over 150 compliance and enforcement staff at FLNR and OGC are authorized to enter and inspect project sites under the *EAA*.

EAO coordinates C&E activities with other agencies including the Ministry of Energy and Mines (MEM) and the Ministry of Environment (Conservation Officer Service, Environmental Protection Division and BC Parks).

As of Spring 2015, EAO C&E is beginning to develop protocols, agreements and partnerships with Aboriginal groups. These various types of informal and formal agreements set out how EAO and the Aboriginal group will work together in compliance oversight of EA projects. There is a spectrum of potential involvement for Aboriginal groups, including

- › information sharing
- › 'observe, record, report' roles
- › environmental monitoring
- › partnership in compliance oversight including field inspections and responding to complaints.

Upon receipt of a complaint from an Aboriginal group, the Compliance Officer refers it to the Aboriginal Liaison Compliance Officer for review and follow-up in coordination with the Compliance Officer on that project. The two Officers determine responsibilities for each complaint based on the nature of the complaint, history on the file, workload, etc. The Aboriginal Liaison Compliance Officer notifies the Senior Compliance Officer and the Manager of Compliance of any significant complaints by Aboriginal groups.

Service Principles

EAO C&E Officers are guided by the following principles:

Fairness

EAO is committed to objective compliance oversight and gives full and fair consideration to all interests.

EAO adheres to the principles of natural justice and administrative fairness. This includes sharing the findings of all compliance and/or enforcement-related actions with certificate holders and providing them with an opportunity to respond.

Timeliness

EAO conducts inspections, complaint reviews, investigations and enforcement in order to support timely and effective compliance oversight of EA projects.

Transparency

EAO maintains an online [Project Information Centre](#) to provide agencies, industry, Aboriginal groups and the public access to project information, including compliance oversight. Certificate holder compliance self-reports, enforcement under the *EAA* and various construction and operations related documents are available online.

Collaboration

EAO ensures the efficient use of resources by collaborating with other compliance agencies across government. This collaboration takes many forms: consultation during the requirement-setting phase of the EA process, compliance oversight on each other's behalf, joint inspections and investigations, joint training, etc.

Continuous Improvement and Effectiveness

EAO promotes a culture of continuous improvement by evaluating certificate conditions and policies to ensure that they are effective in reducing or mitigating adverse environmental, social, heritage, economic, or health impacts ([the five pillars](#)) and adverse impacts on Aboriginal interests. EAO staff also incorporate field experience from inspections into subsequent EAs.

PLANNING, PROMOTING AND VERIFYING COMPLIANCE

Voluntary compliance is always preferable to achieving compliance through enforcement. EAO's C&E Program comprises several activities that, together, are intended to encourage and support voluntary compliance by certificate holders.

This section describes the activities undertaken by EAO to plan, promote and verify compliance.

Compliance Planning

To ensure effective compliance oversight, EAO Compliance Officers prepares the following plans:

- › **Compliance Management Plans (CMPs)** - After a project has been certified, EAO Compliance Officers may prepare a CMP in collaboration with partner agencies. The CMP outlines the general approach to compliance oversight for the project and identifies who is responsible for inspecting and enforcing the certificate conditions. This plan is updated as the project progresses.
- › **Annual Inspection Plans** - Each year, EAO C&E plans inspections in keeping with risk-based criteria and the targets specified in EAO's Service Plan. Inspections can also be conducted in response to new information received by EAO, complaints or in follow-up to previous inspections. [More information about inspections is provided below.](#)

Compliance Promotion

EAO also promotes voluntary compliance amongst certificate holders by:

- › Compliance Officer field presence, through inspections.
- › Working with certificate holders during the EA to provide information about compliance oversight and so certificate holders know conditions are enforced.
- › Presentations at industry conferences about EAO's C&E program.
- › Posting information about the C&E program on EAO's website.
- › Clarifying expectations with certificate holders when reviewing self-reports or conducting inspections.

Compliance Verification

Compliance verification is a shared responsibility: EAO, partner agencies and certificate holders all play roles in verifying project compliance with certificate requirements.

Many certificates require that an environmental monitor (EM) or independent environmental monitor (IEM) be present at certain times, often during construction. The responsibilities and authorities of the monitor vary from project-to-project depending on the mitigations established during the EA. While both are paid for by the certificate holder, environmental monitors report to the certificate holder while IEMs report directly to the government. Both may be given the authority to stop work should there be non-compliance with certificate conditions or other authorizations.

Complaints

EAO may receive a complaint or report of suspected non-compliance relating to a certified project from a provincial agency or another level of government, an Aboriginal group, member of the public, an environmental monitor, a company, etc. When the complaint is received, EAO conducts an initial review to determine whether an inspection or investigation may be required. Once EAO has gathered sufficient information to have a general understanding of the complaint and any associated EAC requirements, EAO determines if an investigation is required, and if yes, informs the certificate holder of the nature of the investigation.

Certificate Holder Self-Reporting

Certificate holders are typically required to report to EAO on the status of project compliance with each certificate condition. Reporting intervals vary depending on the project.

EAO Compliance Officers do not rely solely on certificate holder self-reports to verify compliance; these reports are one of several sources of information. The self-reports are an important tool in that they form part of the certificate holder's compliance history and require them to be accountable, on an ongoing basis, for compliance with the conditions of their certificate.

EAO Compliance Officers review each self-report and, post them online once that review is complete, typically within six weeks. EAO Compliance Officers follow-up on any issues identified in self-reports and, when conducting inspections, refer to the reports to verify the accuracy of information in the self-reports.

EAO charges fees to certificate holders for the review of certificate holder self-reports. [See the EAO website for additional information about fees.](#)

Inspections

EAO conducts two types of inspections: field-based (i.e., on-site) and administrative (i.e., desk-based)³. At the beginning of each year, EAO prepares an inspection plan to identify the projects that will be inspected. The risk-based criteria for selecting the projects for inspection include:

Project risk - Assessment of potential risk to the five pillars, and/or asserted or proven Aboriginal rights.

Project phase - While inspections may be conducted during any project phase, field-based inspections are typically weighted towards projects that are under construction given the higher risks associated with construction activity. For administrative inspections, the pre-construction and construction phases are often the priority so any potential issues can be addressed before operations.

Certificate holder's compliance record - Results from previous inspections or other information may increase or decrease the frequency of inspections for a particular project.

Time of year - Inspections of some projects will be focused on high-risk times of the year (e.g., spring thaw) or during higher-risk events specific to individual conditions (e.g., clearing of a right-of-way).

³Administrative inspections were formerly called audits.

After considering the risk-based criteria above, EAO may identify additional inspections for the following reasons.

Coordination with other compliance agencies - Agencies coordinate inspections so that one agency's inspector can observe, record and report to another agency on issues. In addition, EAO may conduct joint inspections with other agencies to share knowledge and jointly address compliance issues of mutual concern.

Project location - EAO attempts to distribute the inspections throughout the province.

Government priorities - Priorities identified by the Minister, the Natural Resource Sector and/or the EAO Executive inform the inspection plan.

In addition to planned inspections, EAO Compliance Officers may conduct inspections in response to new information or complaints received by EAO or in follow-up to previous inspections. EAO is developing guidance for certificate holders about what to expect before, during and after an inspection.

EAO charges fees to certificate holders for inspections. The fees vary depending on the type of inspection and the amount of travel and work involved. [The current fees can be found here.](#)

Investigations

When information from an inspection, a certificate holder self-report, a public complaint, or a partner agency indicates that a certificate requirement may have been breached, EAO Compliance Officers conduct an investigation to determine if a certificate requirement has been breached. Investigations vary in effort and length of time depending on the nature and complexity of the non-compliance. Often, partner agencies are involved in the investigations. In some cases, the investigation may be referred to another agency with specialized expertise. EAO may also, from time to time, seek the assistance of qualified professionals with subject matter expertise relevant to the investigation.

RESPONDING TO NON-COMPLIANCE

Non-compliance occurs in situations where:

1. A certificate holder is not operating in accordance with the CPD, the conditions of its certificate, or an enforcement action.
2. A reviewable project is being constructed or is operating without a certificate or an exemption order.
3. Certificate holders have provided false or misleading information to EAO.

Responding to non-compliance is often a complex process. Circumstances vary and there are many factors to be considered in determining the most appropriate response.

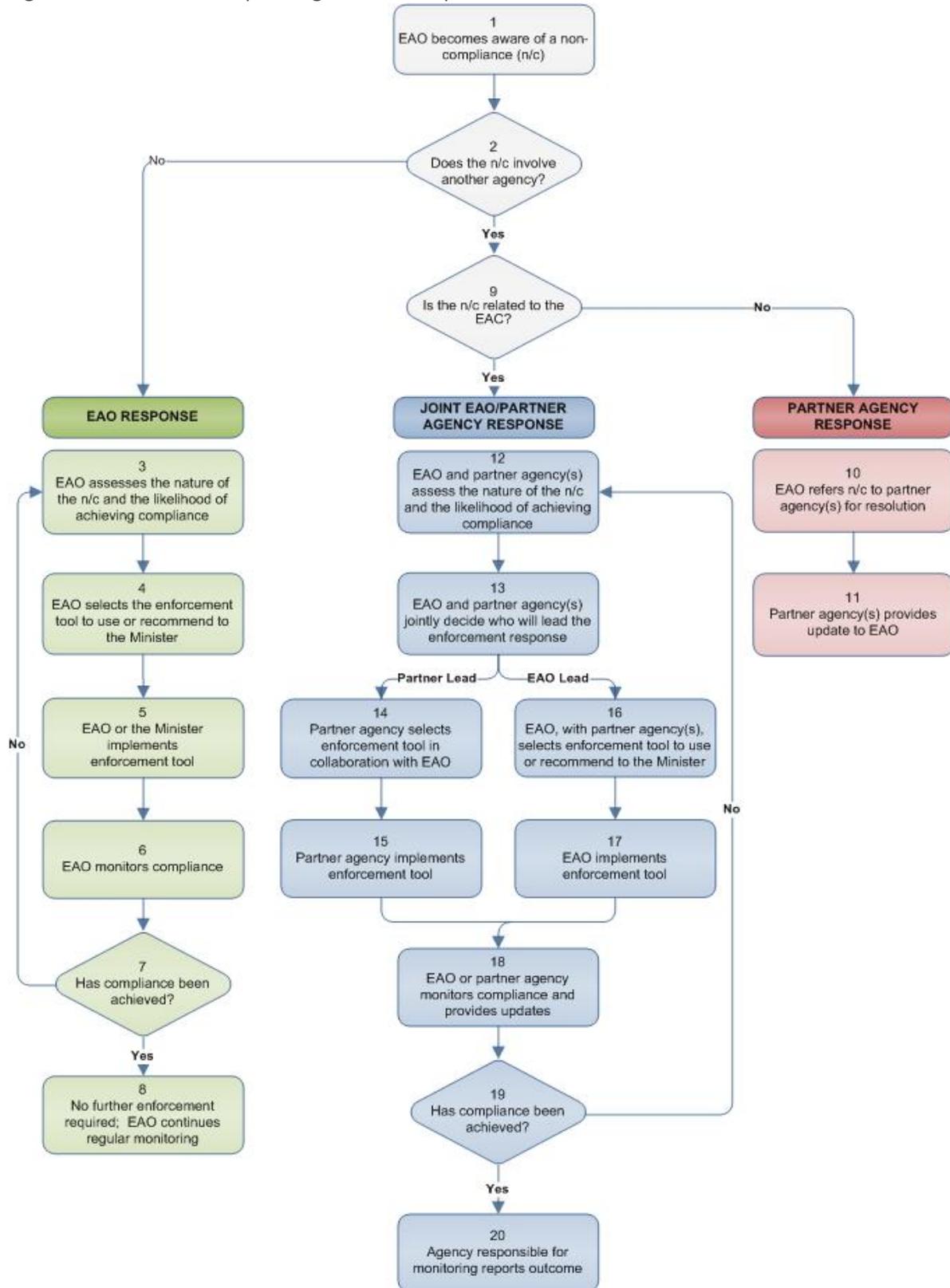
This section explains the general process followed by EAO Compliance Officers once an incident of non-compliance has been identified.

Anyone can report concerns or suspected non-compliance relating to a certified project:

eao.compliance@gov.bc.ca

Phone (250) 387-0131

Figure 2 - Process for Responding to Non-Compliance



Procedures for Responding to Non-Compliance

The procedures described below correspond with the numbered steps in the flow chart in [Figure 2](#) above. These are the steps to be taken in a “textbook” situation and EAO Compliance Officers and partner agencies will use their discretion to respond in a manner appropriate to each situation. Depending on the circumstances of the case, some additional steps may be required and/or some steps may occur in a different order. The time taken to progress through the steps may also differ, for example, if a particular case requires an urgent response.

Step 1

EAO may become aware of non-compliance in the following ways:

- › On-site detection by Compliance Officers from EAO or a partner agency;
- › Complaint by a government agency, a company, an Aboriginal group, a member of the public, etc;
- › Report from an EM or IEM; or
- › Self-report from a certificate holder⁴.

Step 2

If there is non-compliance with the CPD or certificate conditions that are fully within EAO’s mandate, EAO and the Minister⁵ or the Associate Deputy Minister of EAO may take enforcement action independent from of other partner agencies (go to [Step 3](#)).

One or more partner agencies may be involved in addressing non-compliance. In cases where:

- › The non-compliance also involves the contravention of a permit, regulation or other legislative requirement that is outside EAO’s mandate, or
- › Another agency has an interest in the non-compliance or can provide input into the best response.
- › EAO Compliance Officers typically consult the relevant partner agencies to determine the most appropriate approach to resolving the non-compliance (go to Step 9).

⁴ For simplicity, the term “certificate holder” will be used throughout the procedures; however, it is important to note that in some cases, a project proponent may be the non-compliant party (e.g., when a project is being constructed without a certificate).

⁵ The Minister may delegate his/her powers under the Act to any employee of the EAO. Under Section 23 of the Interpretation Act, EAO’s Associate Deputy Minister has all the same powers as the Minister under the *EAA*.

EAO Response

Step 3

In responding to non-compliance that falls completely within EAO's mandate, EAO Compliance Officers assess the following:

Likelihood of compliance - Factors to be considered include:

- › any related history of non-compliance;
- › whether the non-compliance was deliberate;
- › whether there were attempts to conceal information or make false statements during the course of an inspection or in the submission of records (e.g., reports);
- › the certificate holder's willingness to cooperate with officials;
- › evidence of corrective action already taken;
- › whether there is a need for general deterrence, for example if the certificate holder frequently misses legally-binding deadlines or has previous non-compliances.

Nature of the non-compliance - Factors to be considered include:

- › the seriousness of the actual or potential harm with respect to environmental, economic, social, heritage or health impacts; and
- › the seriousness of the actual or potential harm with respect to asserted or proven Aboriginal rights.

Consistency in enforcement - To ensure consistency in its responses to non-compliance, EAO Compliance Officers consult one another and consider how similar situations have been addressed, recognizing that each case of non-compliance has different circumstances which may require a different response.

Step 4

Using the [Enforcement Decision Matrix](#) as a guide, EAO Compliance Officers select the most appropriate enforcement option. This is the enforcement measure that, based on the assessment conducted in [Step 3](#), the Officer considers most likely to be effective in achieving compliance as quickly as possible and with no recurrence. Typically, the EAO Executive Project Director responsible for that sector is advised prior to taking enforcement action.

Step 5

EAO Compliance Officers, the Associate Deputy Minister or the Minister implements the enforcement measure.

Step 6

EAO Compliance Officers determine the most appropriate method to monitor compliance. Methods that may be used for monitoring include inspections by EAO Compliance Officers or partner agencies, self-reporting by the certificate holder, and oversight by an IEM or qualified professional.

Step 7

If compliance is not achieved, EAO Compliance Officers repeat the above steps, beginning with a reassessment of the potential level of harm and likelihood of compliance (go to [Step 3](#)). Escalation of the

enforcement measure may be required depending on the circumstances of the case. EAO Compliance Officers provide updates to the EAO Executive Project Director responsible for the applicable sector.

Step 8

If compliance is achieved, no further enforcement action is required. EAO continues its regular compliance monitoring activities.

-End of EAO Response-

Step 9

Any cases that fall completely outside of EAO's mandate must be identified and redirected to the appropriate agency (go to [Step 10](#)). For example, EAO would refer the issue to the responsible agency if the non-compliance is with a permit requirement not reflected in the certificate.

If the case of non-compliance falls within the mandate of EAO and one or more partner agencies, EAO works collaboratively with the partner agency(s) to determine and implement a response (go to [Step 12](#)).

Partner Agency Response

Step 10

If EAO becomes aware of a non-compliance that falls completely within the jurisdiction of another agency (i.e., it does not relate to a certificate or the *EAA*), EAO Compliance Officers contact the relevant agency and provide all known information to them.

Step 11

In some cases, EAO may request follow-up from the partner agency. The partner agency assesses the situation, determines the appropriate action and monitors compliance.

-End of Partner Agency Response-

Joint EAO/Partner Agency Response

Step 12

If the non-compliance falls within the mandates of EAO and one or more partner agencies, EAO Compliance Officers contact the agency(s) to jointly assess:

Likelihood of compliance - Factors to be considered include:

- › any related history of non-compliance;
- › the certificate holder's willingness to cooperate with officials; and
- › evidence of corrective action already taken.

Nature of the non-compliance: Factors to be considered include:

- › the seriousness of the actual or potential harm with respect to environmental, economic, social, heritage or health impacts and asserted or proven Aboriginal rights;
- › whether the non-compliance was deliberate;
- › whether this is a repeated occurrence;
- › whether there were attempts to conceal information or make false statements during the course of an inspection or in the submission of records (e.g., reports); and
- › whether there is a need for general deterrence.

Consistency in enforcement - To ensure consistency in enforcement across the natural resource sector, where feasible, EAO Compliance Officers and the partner agency(s) may consider how similar situations have been addressed, recognizing that each case of non-compliance different circumstances which may require a different response.

Step 13

Together, EAO and the partner agency(s) determine who is leading the enforcement response, based on the most effective and efficient way to approach the non-compliance. Considerations may include, but are not limited to:

- › The urgency of the situation.
- › The capacity of the respective agency(s) to respond.
- › The enforcement measures available to each agency.

Step 14

If it is decided that the partner agency is leading the enforcement response, the partner agency selects the most appropriate enforcement measure in collaboration with EAO.

Step 15

The partner agency implements the enforcement measure.

Step 16

If it is decided that EAO is leading the enforcement response, EAO Compliance Officers determine the

most appropriate enforcement option based on the assessment conducted in [Step 12](#) and using the [Enforcement Decision Matrix](#) as a guide.

Step 17

EAO Compliance Officers, the Associate Deputy Minister or the Minister implement the enforcement measure.

Step 18

EAO and the partner agency(s) jointly decide who monitors compliance. The lead agency for enforcement is not necessarily the agency that monitors for compliance based on subject matter expertise. Methods that may be used for monitoring include self-reporting by the certificate holder, oversight by an IEM or qualified professional and administrative inspections or field inspections by EAO Compliance Officers or partner agencies.

The agency tasked with monitoring compliance provides updates to the other agency(s) as to the progress of the enforcement action. EAO Compliance Officers typically provide updates to the EAO Executive Project Director responsible for that sector.

Step 19

If compliance is not achieved as a result of the enforcement action taken, EAO Compliance Officers repeat the above steps in consultation with the partner agency(s), beginning with a joint reassessment of the likelihood of compliance and nature of the non-compliance ([Step 12](#)). Escalation of the enforcement action may be required depending on the circumstances of the case.

Step 20

When compliance is achieved, the agency responsible for monitoring reports the outcome to the other agency(s). Regardless of which agency enforces and/or monitors the non-compliance, EAO must be independently and objectively satisfied that the non-compliance has been addressed.

-End of Joint EAO/Partner Agency Response-

ENFORCEMENT MEASURES

There is a range of enforcement options available to EAO, the Associate Deputy Minister and the Minister for resolving cases of non-compliance. EAO Compliance Officers (in conjunction with partner agencies when applicable) assess each case of non-compliance and determine the most appropriate enforcement measure. When collaborating with partner agencies, enforcement measures under the other agencies' legislation may be used by those agencies instead, broadening the overall base of enforcement measures available to effectively resolve non-compliance with certificates and the *EAA*.

This section outlines the purpose of each of the enforcement measures available to EAO Compliance Officers, the Associate Deputy Minister or the Minister, and provides guidelines for their use. In addition, EAO Compliance Officers are designated as Natural Resource Officers, authorized to enforce under a suite of natural resource legislation.

Administrative vs. Judicial Enforcement Action

Administrative enforcement measures are actions that are taken by EAO Compliance Officers, the Associate Deputy Minister or the Minister, without involvement of the courts (see [Figure 3](#)). All administrative enforcement actions must meet the principles of natural justice to ensure procedural fairness.

Judicial enforcement measures are actions that are taken by the courts (see [Figure 3](#)). While EAO Compliance Officers, the Minister and the Associate Deputy Minister have a role in identifying and recommending cases that may be appropriate for judicial consideration, the decision to put the cases forward to the courts rests with the Ministry of Justice and the decision to implement judicial sanctions rests with the court.

Figure 3 - Enforcement Measures

Administrative Enforcement Measures

- > Advisory
- > Warning
- > Minister's Order to Cease or Remedy (Section 34, *EAA*)
- > Compliance Agreement (Section 36, *EAA*)
- > Suspension, Cancellation and Amendment of a certificate (Section 37, *EAA*)

Judicial Enforcement Measures

- > Supreme Court Order (Section 35, *EAA*)
- > Prosecution (Section 41 & 43, *EAA*)

Administrative Enforcement Measures

When an incident of non-compliance is minor in nature and/or communication with the certificate holder is likely to be effective in resolving the non-compliance, EAO Compliance Officers may decide to issue an advisory or warning. The purpose of these enforcement measures is to allow the certificate holder to take corrective action without formal sanctions being imposed. These enforcement measures serve as a record of the alleged non-compliance, forming an element of the certificate holder's compliance history and providing information on compliance patterns and trends that can assist in the ongoing management of a project.

Advisory

An advisory notifies certificate holders in writing that they are not in compliance with a specific certificate condition or component of the CPD and may recommend a course of action to achieve compliance. An advisory is often the first written enforcement action taken in cases of minor to moderate non-compliance where there is a high likelihood of achieving compliance. An advisory may:

- › include information about the certificate conditions;
- › list sources of additional information and educational materials; and
- › include requests for a description of the cause of the non-compliance, measures being considered to prevent further non-compliance and the certificate holder's plan to address the non-compliance.

Warning

Similar to an advisory, a warning notifies certificate holders in writing that they are not in compliance with a specific certificate condition or component of the CPD. However, a warning differs from an advisory in that it warns of the possibility of an escalating response should the non-compliance continue.

A warning is issued in the form of a letter or inspection reports and may:

- › include information about the certificate conditions;
- › list sources of additional information and educational materials;
- › include requests for a description of the cause of the non-compliance, measures being considered to prevent further non-compliance, and the certificate holder's plan to address the non-compliance; and
- › require written confirmation from the certificate holder that steps have been taken to achieve compliance.

If it is determined that the non-compliance warrants escalation, the *EAA* provides options for administrative sanctions that can be used to bring the certificate holder into compliance. These include Minister's Orders to cease or remedy and the suspension, cancellation or amendment of a certificate. The *EAA* also provides for the use of a legally-binding compliance agreement.

Minister's Order to Cease or Remedy

Legislative Authority - Section 34, EAA

In cases where a certificate holder does not adhere to the certificate, where the certificate is no longer in effect, or a where a certificate has not been issued, the Minister, Associate Deputy Minister or EAO Compliance Officers may issue an Order requiring that:

- › the certificate holder stop work for an activity at specific location(s) or for the entire project until the proponent obtains a certificate or the certificate holder complies with the certificate; or
- › the certificate holder remedy the non-compliance within a specified timeline.
- › Non-compliance with an Order is an offence under Section 41(2) of the *EAA*. If the certificate holder does not comply with the original Order, the Minister, Associate Deputy Minister or EAO Compliance Officers can issue an additional Order under Section 34(2) to comply. If the certificate holder continues to be non-compliant with the Order, EAO or the Minister may pursue sanctions against the certificate holder through the courts (see [Supreme Court Order](#) and [Prosecution](#))

Compliance Agreement

Legislative Authority - Section 36, EAA

The Minister or Associate Deputy Minister may enter into a written compliance agreement with a certificate holder, which reconfirms that the certificate holder is legally-bound to comply with the certificate but within the amended timelines and terms specified in the agreement. The compliance agreement is a negotiated means of resolving non-compliance. It is used in cases where the certificate holder is willing and able to achieve compliance but the Associate Deputy Minister or Minister has determined that a structured approach to issue resolution is most appropriate. The agreement may set out:

- › requirements over a period of time to bring the project into compliance;
- › follow-up monitoring;
- › requirements for certain actions to be completed or overseen by a qualified professional;
- › consultation or information sharing requirements;
- › provisions for changing certain requirements (e.g. monitoring or deadlines) at the discretion of a Compliance Officer; and
- › next steps if the non-compliance is not rectified.

If circumstances change after an agreement has been reached, the certificate holder may apply to the Associate Deputy Minister or Minister to alter the agreement.

Suspension, Cancellation and Amendment of a Certificate

Legislative Authority - Section 37, EAA

The Minister or Associate Deputy Minister may suspend all or some of the rights of a certificate holder or cancel a certificate in cases where:

- › The Minister or Associate Deputy Minister has reasonable and probable grounds to believe that the certificate holder is in default of:
 - › an Order of the Supreme Court;
 - › an Order of the Minister; or
 - › one or more requirements of the certificate.
- › The certificate holder has been convicted of an offence under the *EAA*.
- › The certificate holder is in default of an Order that requires them to pay costs.

The Minister or Associate Deputy Minister may choose to make these Orders prior to or instead of applying to the Supreme Court for an Order.

The Minister or Associate Deputy Minister cannot make a Section 37 Order without first giving the certificate holder notice of the Order and an opportunity to be heard and respond to the EAO's position (Section 38). The only exception is an emergency.

Judicial Enforcement Measures

In cases where administrative sanctions have not been effective and/or the non-compliance is severe enough to warrant stricter penalties, EAO or the Minister may pursue sanctions against the certificate holder through Supreme Court Orders or prosecution.

Supreme Court Order

Legislative Authority - *Section 35, EAA*

If compliance is not achieved after a Minister's Order has been issued, the Minister may apply to the Supreme Court for an Order. The Supreme Court may make an Order as it considers appropriate. It is an offence to not comply with an Order issued under Section 35.

Prosecution

Legislative Authority

- › Offences: Section 41, *EAA*
- › Penalties: Section 42, *EAA*
- › Restitution: Section 47, *EAA*

Prosecution is a legal proceeding in court against a proponent or a certificate holder alleged to have committed an offence. A person commits an offence under the *EAA* by:

- › commencing or modifying a reviewable project without a certificate or a certificate exemption (Section 8[1] or [2]);
- › not complying with a certificate;
- › not complying with an Order of the Minister (Section 34) or a court Order (Section 35); or

Prosecution is an important enforcement measure that would be reserved for the most serious cases where other enforcement measures are unlikely to be effective or there is a need for general deterrence that would result from a court hearing. The decision to pursue prosecution is determined on a case by case basis.

- › knowingly making a false or misleading statement in a record filed under the *EAA*.

Formal charges may be recommended by C&E Officers, but the decision to lay a charge is the responsibility of Crown Counsel in the Criminal Justice Branch (CJB), Ministry of Justice. Crown Counsel would review investigation reports from EAO or partner agencies. The CJB's charge assessment guidelines policy requires both a substantial likelihood of conviction and that a prosecution is in the public interest.

ENFORCEMENT DECISION MATRIX

The Enforcement Decision Matrix is a risk-based tool for assessing the factors that can influence the selection of enforcement measures. The matrix is intended to be a guidance tool, to be used by Compliance Officers at their discretion when considering the context and specifics of individual cases of non-compliance.

Figure 4 - Enforcement Decision Matrix

Likelihood of Achieving Compliance	Low	<ul style="list-style-type: none"> Minister's Order to cease or remedy - Warning 	<ul style="list-style-type: none"> EAC Suspension - EAC Amendment - Minister's Order to cease or remedy 	<ul style="list-style-type: none"> Prosecution - EAC Cancellation - Minister's Order to cease or remedy - EAC Suspension
	Moderate	<ul style="list-style-type: none"> Compliance Agreement - Warning 	<ul style="list-style-type: none"> EAC Amendment - Minister's Order to cease or remedy - Compliance Agreement - Warning 	<ul style="list-style-type: none"> EAC Suspension - EAC Amendment - Minister's Order to cease or remedy - Compliance Agreement
	High	<ul style="list-style-type: none"> Warning - Advisory 	<ul style="list-style-type: none"> Minister's Order to cease or remedy - Compliance Agreement - Warning 	<ul style="list-style-type: none"> EAC Amendment - Minister's Order to cease or remedy - Compliance Agreement - Warning
		Minor	Moderate	Major
		Nature of Non-Compliance		

Using the Matrix

Step 1 - Choose the most appropriate square in the matrix

The enforcement measures in each square of the matrix represent options to respond to non-compliance. When choosing the most appropriate square, consider the nature of the non-compliance (the level of harm) and the perceived likelihood of achieving compliance. For example, if the harm resulting from the non-compliance is assessed as major and the likelihood of bringing the certificate holder into compliance is high, choose the lower right square.

Step 2 - Choose the most appropriate enforcement measure

Each square offers a selection of enforcement measures. They are generally listed in order of escalation response (with the strongest response at the top of each square), although Minister's Orders, compliance agreements and amendments are flexible enforcement measures that can vary significantly in their scope and effect depending on the nature of the non-compliance. The choice of enforcement measure depends on the particulars of the situation. With the example given in [Step 1](#) (enforcement measures in the lower right square), a warning may suffice unless a Minister's Order to cease or remedy is required to immediately stop work or impose specific, time bound actions to mitigate the effects of the non-compliance. If new conditions are necessary over the life of the project, for example ongoing mitigations or monitoring and reporting, an amendment to the certificate or a compliance agreement may be appropriate.

Step 3 - Move between squares in the matrix

If compliance has not been achieved after implementing one or more of the enforcement measures in one square of the matrix, an escalated response may be necessary as the likelihood of achieving compliance has been reduced. In such cases, enforcement measures in the next square higher may be considered.

Nature of the Non-Compliance

How significant is the actual or potential harm that the non-compliance has produced?

Minor - A minor non-compliance does not, or is unlikely to, result in adverse impacts to the five pillars or asserted or proven Aboriginal rights. The actual or potential impacts of the non-compliance are minimal and temporary in nature. Examples include non-compliances of an administrative nature such as failing to supply a required report; to include specific information in a plan; or to keep adequate records.

Moderate - A moderate non-compliance results in potential or actual impacts, typically localized and short term. Examples include failing to perform a required task such as applying sediment control measures or adhering to timing windows.

Major - A major non-compliance results in potential or actual severe impacts. Examples include constructing or operating the project in a manner that threatens:

- › human health, safety, or the environment (e.g. failing to meet emissions requirements, failing to maintain instream flow requirements, failing to mitigate for habitat damage);or
- › asserted or proven Aboriginal rights.

Likelihood of Achieving Compliance

What is the likelihood that the certificate holder will respond appropriately to the enforcement action?

High - There may be a high likelihood of achieving compliance if:

- › the non-compliance can be easily remedied; and
- › the certificate holder:
 - › has a good compliance history;
 - › voluntarily disclosed the non-compliance if aware of it;
 - › did not deliberately cause the non-compliance or was not willfully negligent; and/or
 - › demonstrates awareness of certificate requirements and the willingness and capacity to comply.

Moderate - There may be a moderate likelihood of achieving compliance if:

- › the non-compliance will be technically challenging to remedy;
- › the certificate holder is willing to cooperate with government officials; however, the holder:
 - › has had previous contraventions;
 - › may not have the capacity to comply due to the technical complexity or cost of the requirements; and/or
 - › was aware of the requirements but deliberately did not complete the required action or took contrary action.

Low - There may be a low likelihood of achieving compliance if:

- › the non-compliance cannot be remedied (e.g., the damage is irreparable) or is technically very challenging to remedy;
- › there is evidence that the non-compliance was deliberate or the result of willful negligence; or
- › the certificate holder:
 - › has multiple past contraventions;
 - › displays a poor attitude regarding compliance oversight;
 - › hinders or obstructs government officials; and/or
 - › refuses to provide information or provides false or misleading information.

CONCLUSION

Compliance and enforcement are integral to an effective environmental assessment process. Collaboration with partner agencies ensures a coordinated approach to compliance on major projects across the natural resource sector. EAO is committed to working with other compliance agencies to ensure continuous improvement of British Columbia's compliance and enforcement regime.

Reporting Suspected Non-Compliances

Agencies as well as members of the public, other levels of government, Aboriginal groups, etc that have information about a suspected EA non-compliance are encouraged to contact EAO compliance and enforcement.

- › [Send an email](#) or Phone (250) 387-0131

To report other suspected non-compliance

Report poachers and polluters to the Conservation Officer Service at:

- › 1-877-952-RAPP (7277) or #7277 on most cellular networks or
- › <http://www.env.gov.bc.ca/cos/rapp/form.htm>

Report incidents to the BC Oil and Gas Commission at:

- › 1-800-663-3456

Report forest fires or abandoned campfires to the Wildfire Management Branch:

- › 1-800-663-5555 or *5555 on most cellular networks

Report violations of natural resource legislation to Natural Resource Officers at:

If you live in the Thompson/Okanagan

- › 1-844-NRO-TIPS (1-844-676-8477) or
- › <http://www.for.gov.bc.ca/hen/nrv/>

If you live anywhere else in the province

- › your local Ministry of Forests, Lands and Natural Resource Operations district office or
- › the FrontCounter BC office in your area

When reporting non-compliance, please provide as much information as you can.

Think about “the five W’s” (who, what, when, where, why) and how. Include any details you may have (e.g., names, machinery numbers).