

ENVIRONMENTAL ASSESSMENT CERTIFICATES

BACKGROUND

The Reviewable Projects Regulation (Regulation) lists the types of major projects in BC required to obtain an Environmental Assessment Certificate (certificate) under the Environmental Assessment Act (Act). The Environmental Assessment Office (EAO) administers the Act and its regulations, including the assessment of proposed major projects.

ENVIRONMENTAL ASSESSMENT CERTIFICATE

A multi-year assessment process is required to obtain a certificate. Proponents usually work with the EAO, Indigenous nations and other stakeholders before submitting a formal application for a certificate. The EAO determines the appropriate content to recommend to statutory decision makers for the certificate. Mitigation measures developed during the assessment process to avoid or mitigate potential adverse effects are incorporated into the certificate:

- In the certified project description (CPD) and the table of conditions (TOC);
- The CPD lists the features of the project that can be constructed; and,
- The TOC imposes conditions on how the project must be constructed, operated, and, if applicable, decommissioned.

A project can only proceed after a certificate is issued. Proceeding to construction or pre-construction activities for the project without a certificate is contrary to section 6 of the Act¹. The certificate holder (Holder) must design build, operate and, if applicable, decommission the project in accordance with the CPD and TOC. Failure to comply with the legally binding requirements of the certificate may be a non-compliance and may result in enforcement action.

CERTIFICATE DURATION

Certificates specify a deadline of no more than 10 years after the issue date, by which time the project, in the reasonable opinion of the Minister, must have been substantially started. The Act allows for a one-time-only extension of that deadline of no more than 5 years. If the project is deemed to have been substantially started, the certificate remains in effect for the life of the project. If the project has not been substantially started, the certificate expires. If a certificate expires, section 31 (8) requires Holders to implement any conditions respecting decommissioning or reclamation activities. Additionally, the Chief Executive Assessment Officer (CEAO) may order the former Holder to undertake decommissioning or reclamation activities.

AMENDING A CERTIFICATE

If changes are necessary, the Act allows certificates to be amended. If a change is identified during a subsequent permitting or authorization process that is not consistent with the certificate, Holders are encouraged to contact the EAO as early as possible. In these circumstances it may be possible to develop a concurrent review process to avoid duplication of effort and minimize delays. A Holder can apply for an amendment under section 32 of the Act.

¹ For information on investigative use activities and major projects, see "Investigative Use for Major Projects" available on the EAO's compliance and enforcement webpage here: <https://www2.gov.bc.ca/gov/content/environment/natural-resource-stewardship/environmental-assessments/compliance-and-enforcement>

SUBSEQUENT PERMITTING

Proponents must obtain a certificate before they obtain any subsequent permits or authorizations required for the project. As per section 8 of the Act, if permits or authorizations are issued for projects listed in the Regulation before a certificate has been obtained, those permits, or authorizations, are without effect. This has important compliance implications for the EAO, the proponent, and the agency that issued the permits or authorizations.

Holders must ensure any subsequent permits or authorizations are consistent with the certificate. If a project is constructed consistent with a permit or authorization, but is inconsistent with the certificate, the project may be out of compliance with the Act and may cause the permits or authorizations to be without effect.

COMPLIANCE AND ENFORCEMENT

Compliance and Enforcement Officers (C&E Officers) at the EAO conduct compliance oversight of the Act, its regulations, certificates and exemption orders. C&E Officers determine the appropriate compliance and enforcement response if a project:

- Is required to have a certificate or exemption order and does not; or
- Is out of compliance with the Act, its regulations, certificate or exemption order.

CANCELLATION

The CEAO may cancel a certificate or rescind an order on request from a Holder under section 56(4). The CEAO may attach conditions requiring the Holder to perform certain actions if a certificate is cancelled or an order rescinded.

EXEMPTION ORDERS

The information above on subsequent permitting processes and compliance and enforcement oversight applies to exemption orders, but there are a few key differences between exemption orders and certificates.

- The application process to obtain an exemption order often only takes a few months;
- Exemption orders include:
 - An exempted project description which lists the features of the project that can be constructed without the need for an environmental assessment; and,
 - A table of conditions that, if necessary, imposes conditions on how the project must be constructed, operated, and, if applicable, decommissioned.

CONTACT INFORMATION

For more information on the environmental assessment process, contact the EAO at eaoinfo@gov.bc.ca.