

Compliance and Enforcement Policy and Procedures

VERSION 1.1

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ENVIRONMENTAL ASSESSMENT OFFICE



EAO

Environmental
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ACRONYMS

CEAO	Chief Executive Assessment Officer
C&E	Compliance and Enforcement
CPD	Certified Project Description
EPD	Exempted Project Description
EA	Environmental assessment
EAA	<i>Environmental Assessment Act</i>
EAC	Environmental assessment certificate
EAO	Environmental Assessment Office
EM	Environmental Monitor
IEM	Independent Environmental Monitor
MP	Management Plan

1.0 PURPOSE

The purpose of this document is to:

- Explain the compliance and enforcement (C&E) policy of the Environmental Assessment Office's (EAO) Compliance and Enforcement Branch (C&E); and,
- Explain how C&E Officers (Officers) determine appropriate enforcement action in response to a non-compliance.

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 and Enforcement Officers, the Chief Executive Assessment Officer or the Minister in carrying out their duties.

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

2.0 BACKGROUND

The Reviewable Projects Regulation (Regulation) lists the types of major projects in BC required to obtain an Environmental Assessment Certificate (certificate)¹ or exemption order under the Environmental Assessment Act (Act). The Environmental Assessment Office (EAO) administers the Act.

2.1. Environmental Assessment Certificates

If a project is required to undergo an environmental assessment, the mitigation measures developed during the assessment process to avoid or mitigate potential adverse effects are incorporated into the certificate

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 Act². The Holder must design build, operate and, if applicable, decommission the project in accordance with the certificate. Failure to comply with the legally binding requirements of the certificate may be a non-compliance and may result in enforcement action.

After a certificate is issued, the Holder may not vary from any of the requirements without an amendment. Certificate requirements may be added, deleted or modified by the decision maker through the amendment process.

¹ For more information on certificates see the "Environmental Assessment Certificate Policy: drafting conventions for certificates, amendments and orders" available on the EAO's guidance documents webpage here:

<https://www2.gov.bc.ca/gov/content?id=2AAD846F6E0143008F957D20308B19DB>

² 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>.

2.2. Exemption Orders

If the chief executive assessment officer determines that a project will not have a significant adverse environmental, economic, social, cultural or health effect or will not have a serious effect on an Indigenous nation or the rights recognized and affirmed by section 35 of the Constitution Act, 1982, the Minister can issue an exemption order (order) for that project. This means the project can proceed without an environmental assessment or certificate, but that it will still be subject to legally binding requirements set forth in an order. Requirements for orders are set out in the exemption order or schedules attached to the order.

After an order is issued, the holder may not vary from any of the requirements without obtaining an amendment to the order.

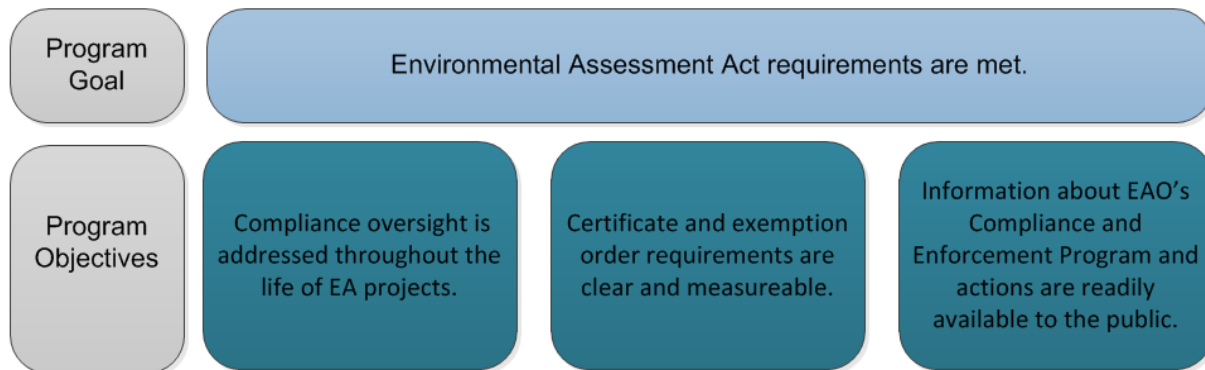
3.0 COMPLIANCE AND ENFORCEMENT BRANCH

This section provides an overview of the EAO C&E Branch, including areas of collaboration with partner agencies and the principles that guide compliance and enforcement activities.

3.1. Program Overview

The overall goal of the EAO C&E Branch is for the EAO to be independently and objectively satisfied that the requirements of the Act are being met. An overview of the program objectives that support the achievement of this goal is provided in Figure 1 below.

Figure 1 - Compliance and enforcement program



3.2. Guiding Principles

The EAO C&E Branch and its Officers are guided by the following principles:

3.2.1. Fairness

EAO is committed to objective compliance oversight and gives full and fair consideration to all interests. This includes, for example, information provided to the EAO by a third party, such as a complaint made against a project by a member of the public.

3.2.2. Administrative Fairness

EAO C&E is governed by the principle of administrative fairness:

The duty to act in good faith and without bias in making statutory decisions; and,

To give each party an opportunity to know the case against the party and to provide a response before making a final decision on the findings.

3.2.3. Timeliness

EAO C&E conducts inspections, complaint reviews, investigations and enforcement to support timely and effective compliance oversight of EA projects. EAO C&E sometimes is required to triage workload based on the ongoing nature of non-compliances and the impacts of those non-compliances.

3.2.4. Transparency

The EAO maintains an online electronic project information centre (EPIC) to provide agencies, industry, Indigenous nations and the public access to project information, including compliance oversight and enforcement actions. Information about the environmental assessment, compliance self-reports, and various construction and operations related documents, such as management plans required by certificates, and the results of inspections are also available on EPIC. EPIC is available here:

<https://www.projects.eao.gov.bc.ca/>.

3.2.5. Collaborating with other compliance and enforcement agencies

EAO C&E ensures the efficient use of government resources by collaborating with other compliance agencies. 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.

3.2.6. Working with Partner Agencies and Indigenous nations

3.2.6.1. Partner Agencies

Working closely with provincial and federal partner agencies is essential to the delivery of C&E at the EAO. Holders typically obtain permits and authorizations from other regulatory agencies after a certificate is issued. Officers work with permitting staff and subject matter experts in other regulatory agencies with jurisdiction on major project sites. Consequently, once a project is certified, EAO and partner agencies communicate to clarify compliance roles and responsibilities. The EAO works with partner agencies to:

- Develop agreements with partner agencies to guide collaboration when managing certified projects;
- Conducting inspections with partner agencies:
 - Joint inspections: EAO C&E and staff from partner agencies jointly inspect together but within their respective mandates;
 - Coordinated Inspections: Officers and partner agencies observe, record and report on matters

- of interest to each other after an inspection takes place; and,
- o Interagency Training Inspections: Officers attend partner agency inspections for subject matter specific training purposes
- In some cases, the EAO delegates authority to conduct compliance and enforcement activities on its behalf to other regulatory agencies and Indigenous nations.

Section 49 of the Act allows Officers to bring along with them “any individuals and equipment that may be necessary for the purpose of the entry”. This might be a staff member from another regulatory agency, an independent qualified professional or an independent qualified person³ that the EAO has retained to provide an opinion during the inspection.

3.2.6.2. Indigenous nations

EAO C&E has a history of working with Indigenous nations during compliance activities. EAO C&E has formalized the indigenous engagement program to include procedures for attending inspections as well as dedicated resources to facilitate Indigenous engagement. Indigenous engagement staff will; in addition to providing support to EAO compliance staff and Indigenous participants, also engage with Nations to understand and document Nations interests in projects related to compliance.

Indigenous nations can also become involved in compliance and enforcement work with the EAO through participation in the natural resource sector (NRS) Aboriginal Liaison Program (ALP).

The EAO works with the Natural Resource Sector (NRS) Aboriginal Liaison Program (ALP) to build relationships and understanding between Indigenous Nations and the EAO by encouraging communication and information sharing.

Through individuals designated as Liaisons, Indigenous nations who identify concerns can contact EAO C&E staff directly to monitor issues they have reported. Liaisons participate in field inspections and training with EAO C&E and other NRS agencies relating to a wide range of natural resource development. Liaisons gain direct knowledge of issues that are of interest to their community and are an effective communication bridge between the EAO and their community. Through the program, they become properly equipped, trained, and supported with resources for Indigenous communities to assist the EAO (and other NRS agencies) in monitoring and inspection tasks as appropriate. The ALP provides a means of enhancing communication and relationship building between the EAO and Indigenous communities and supporting greater Indigenous community awareness of the life cycle of natural resource activities.

The NRS ALP is funded by the BC Government. Participation in the program is subject to available funds and approval by the steering committee. The program continues to evolve with an aim to increasing partnerships with Indigenous nations and the BC government.

³ For more information on independent qualified professionals and independent qualified persons see the EAC Policy: Drafting Conventions for Certificates, Exemption Orders and Amendments” on the EAO’s guidance documents webpage at: <https://www2.gov.bc.ca/gov/content?id=2AAD846F6E0143008F957D20308B19DB>

4.0 PLANNING, PROMOTING AND VERIFYING COMPLIANCE

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

4.1. Compliance Planning

4.1.1. Inspection Planning

At the beginning of each fiscal year, EAO prepares an annual inspection plan to identify the projects that will be inspected. Risk-based criteria and the targets specified in EAO's Annual Service Plan⁴ help determine which projects will be selected for planned inspections. Inspections can also be conducted in response to new information received by the EAO, complaints or in follow-up to previous inspections.

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;
- Compliance record - Results from previous inspections or other information may increase or decrease the frequency of inspections for a project;
- Time of year - Inspections of some projects will be focused on high-risk times of the year, such as spring thaw, or during higher-risk events specific to individual conditions, such as clearing for a right-of-way;
- Previous inspections –If the project has not been inspected previously the project is more likely to be selected for a planned inspection.

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

- Coordination with partner agencies - EAO C&E may conduct joint inspections with other agencies to share knowledge, jointly address compliance issues of mutual concern and minimize expenses. Inspections are also coordinated between agencies, so Officers can observe record and report on issues of concern to another agency.
- Government priorities - Priorities identified by the Minister, the Natural Resource Sector or the EAO Executive inform the inspection plan.

4.2. Compliance Promotion

EAO promotes compliance by:

- Working with proponents during the EA to provide information about compliance oversight to

⁴ The EAO's annual service plan is incorporated into the Ministry of Environment and Climate Change Strategies annual service plan. It is available here: <https://www2.gov.bc.ca/gov/content/governments/organizational-structure/ministries-organizations/ministries/environment-climate-change/service-plan>

ensure they understand the requirements of a certificate are legally binding and must be adhered to;

- Conducting inspections;
- Requiring all certified projects to retain an Independent Environmental Monitor;
- Posting the results of inspections and enforcement actions on EAO's website;
- Preparing and publishing guidance documents on the C&E Branch on the EAOs website here: <https://www2.gov.bc.ca/gov/content/environment/natural-resource-stewardship/environmental-assessments/compliance-and-enforcement>.

4.3. Compliance Verification

Compliance verification is a shared responsibility. EAO, partner agencies, the owners of reviewable projects and Holders all play roles in verifying project compliance with the Act.

4.3.1. Complaints

If EAO C&E receives a complaint or report of suspected non-compliance, the EAO will assign an Officer to conduct an initial review to determine if an inspection or investigation is required. For more information on how the EAO responds to complaints, see the "Complaint Guidance" available on the compliance and enforcement webpage on the EAO website here:

<https://www2.gov.bc.ca/gov/content/environment/natural-resource-stewardship/environmental-assessments/compliance-and-enforcement> .

4.3.2. Certificate Holder Self-Reporting

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

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

Each self-report is posted online when it is received. Officers will use self-reports as a source of information about the project when responding to complaints or preparing for inspections or investigations. For more detailed information on compliance self-reports and how the EAO utilizes these documents, see the "Certificate Holder's Guide to Compliance Self-Reports" available on the compliance and enforcement page on the EAO website here:

<https://www2.gov.bc.ca/gov/content/environment/natural-resource-stewardship/environmental-assessments/compliance-and-enforcement> .

4.3.3. Independent Environmental Monitors

Beginning in 2017, the EAO started including a standard condition in all certificates for an Independent Environmental Monitor (IEM). The IEM is on site as an independent and neutral observer who provides recommendations to the Holder on issues related to compliance but reports directly to government regulators. IEMs report their observations of actions that may lead to or have resulted in non-compliance to EAO C&E. EAO C&E then determines the appropriate compliance and enforcement response. IEMs may

be directed by EAO C&E to observe specific activities such as works in or about a stream or road construction.

For more detailed information on the role of independent environmental monitors, see the document titled “Information Bulletin: Environmental Monitors and Independent Environmental Monitors” available on the compliance and enforcement page on the EAO website here:

<https://www2.gov.bc.ca/gov/content/environment/natural-resource-stewardship/environmental-assessments/compliance-and-enforcement>.

Determining Compliance:

As the regulatory agency responsible for administering the Act and issuing certificates and exemption orders, in situations of dispute, the EAO will determine if an action is possible or practicable.

4.3.4. Inspections

EAO C&E has authority to conduct inspections under section 49 of the Act. Two types of inspections are conducted: administrative (i.e., desk-based) and field-based (i.e., on-site).

Administrative inspections occur when sections of a certificate or order are selected for compliance verification based on a review of documentary evidence. Officers will inform the Holder if their certificate or order has been selected for an administrative inspection. They will be asked to provide documents for compliance verification purposes. Administrative inspections do not typically include an on-site inspection but sometimes they can.

Field Inspections occur when Officers attend a project site to verify compliance with the certificate or order. They can be planned or spontaneous. If the inspection is planned:

- The Holder will typically be given advanced notice of the inspection a few days or weeks before the inspection date;
- Officers may request information in advance and/or after the field inspection including information such as a project status update or copies of management plans; and,
- Officers may ask the Holder to have personnel, information, equipment or documents ready for the inspection.

If the inspection is spontaneous, the Holder or owner of the reviewable project will not be given notice of the inspection. The Act requires Officers to identify themselves at the beginning of an inspection, so Holders will always know if there is an Officer onsite.

During an inspection, anything the Holder, their representative or project or contractor personnel say may be used to inform the proceedings or findings of the inspection.

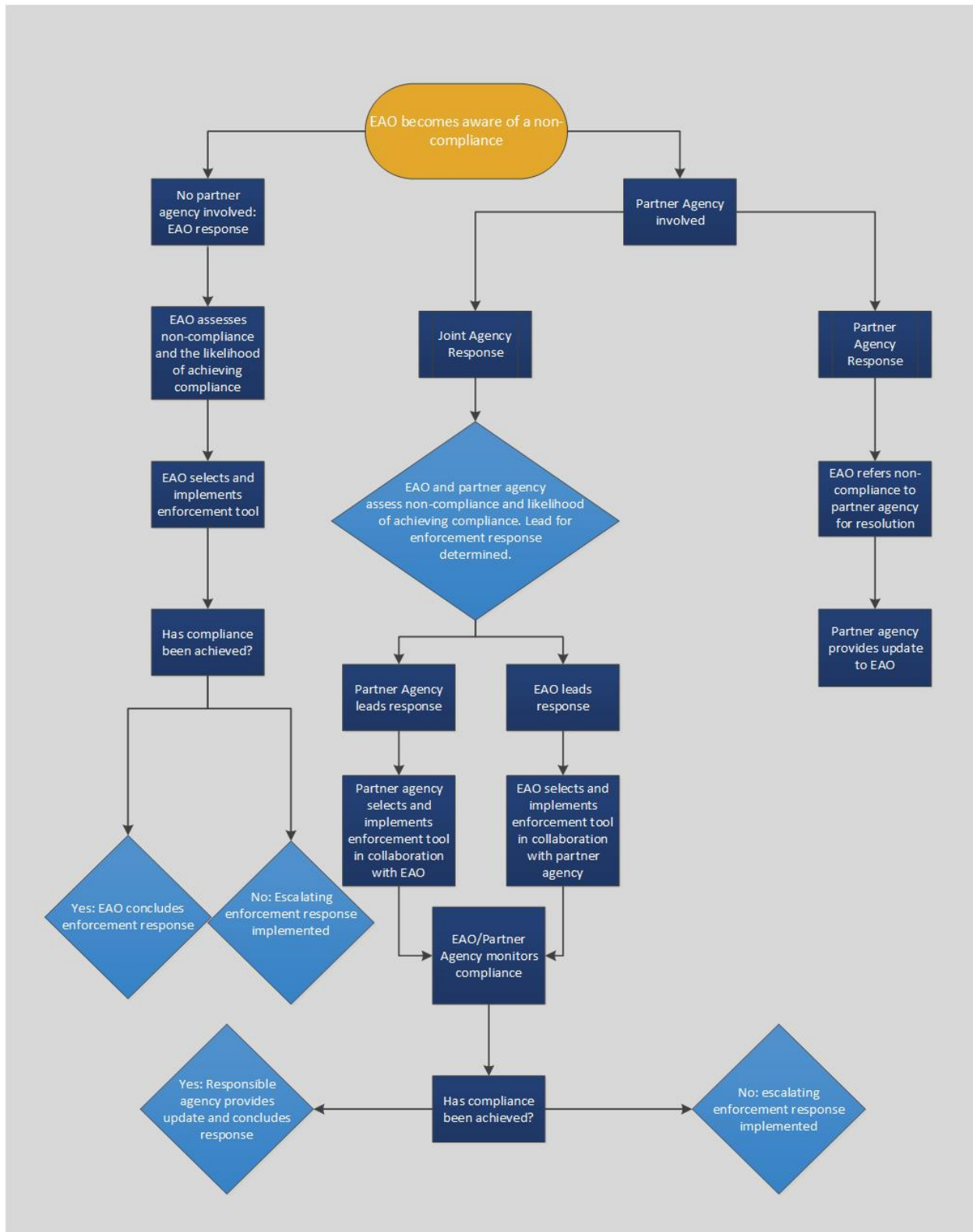
4.3.5. Investigations

EAO C&E Officers have the authority to conduct investigations under section 51 of the Act. Officers may investigate to gather evidence of a non-compliance for the purposes of supporting an enforcement action, such as a recommendation for prosecution under the Act. Investigations vary in effort and length of time depending on the nature and complexity of the non-compliance. Often, partner agencies are involved in 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.

5.0 RESPONDING TO NON-COMPLIANCE

Responding to non-compliance is often a complex process. Circumstances vary and there are many factors to be considered in determining the appropriate response. This section explains the general process followed by Officers once an incident of non-compliance has been identified.

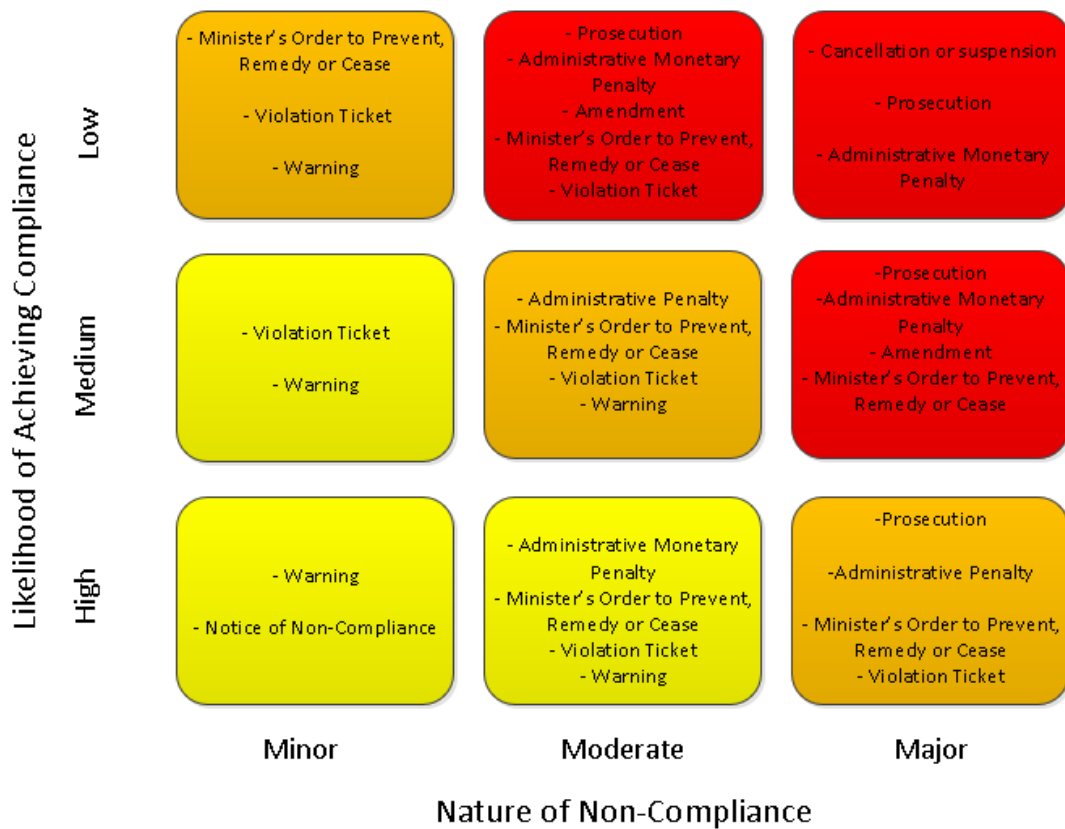
Figure 2 - Responding to non-compliance



5.1. ENFORCEMENT DECISION MATRIX

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

Figure 3 - Enforcement decision matrix



5.1.1. Using the Matrix

For any given non-compliance there is a suite of enforcement responses. To determine which enforcement response is appropriate, 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 offender into compliance is high, choose the lower right square.

5.1.1.1. Impact of the non-compliance

How significant is the actual or potential harm of the non-compliance?

- Minor - A minor non-compliance does not, or is unlikely to, result in adverse impacts to the five pillars or asserted or proven Indigenous rights. The actual or potential impacts of the non-compliance are minimal and temporary in nature.

- Moderate - A moderate non-compliance results in potential or actual impacts, typically localized and short term.
- Major - A major non-compliance results in potential or actual severe impacts, can be localized or wide spread and can be temporary or permanent.

5.1.1.2. Likelihood of Achieving Compliance

What is the likelihood that the offender 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 offender:
 - has a demonstrable history of maintaining compliance with their certificate or other authorizations;
 - voluntarily disclosed the non-compliance;
 - did not deliberately cause the non-compliance or was not willfully negligent; or,
 - Demonstrates awareness of legal requirements and has 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 offender is willing to cooperate with government officials, yet they;
 - have had previous contraventions;
 - may not have the capacity to comply due to the technical complexity or cost of the requirements; or,
 - Were aware of the requirements but 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 offender:
 - has multiple past contraventions;
 - displays a poor attitude regarding compliance oversight;
 - hinders or obstructs government officials; or,
 - refuses to provide information or provides false or misleading information.

5.1.1.3. Select and implement the most appropriate enforcement measure

The choice of enforcement measure depends on the situation. If compliance has not been achieved after implementing one or more of the enforcement measures in one square of the matrix, an escalating enforcement response may be necessary. In such cases, the EAO will determine the appropriate enforcement response to compel the offender to comply.

6.0 ENFORCEMENT MEASURES

There are a range of enforcement options available to EAO, the Chief Executive Assessment Officer (CEAO), and the Minister for resolving cases of non-compliance. Officers (in conjunction with partner agencies when applicable) assess each case of non-compliance and determine the most appropriate enforcement measure.

This section outlines the purpose of each of the enforcement measures available to Officers, the CEAO or the Minister and provides guidelines for their use. In addition, Officers are designated as Natural Resource Officers and authorized to enforce under the Natural Resource Compliance Act⁵.

6.1. Administrative vs. Judicial Enforcement Action

Administrative enforcement measures are actions taken by Officers, the CEAO or the Minister without involvement of the courts (see Figure 4). All administrative enforcement actions must meet the principles of natural justice to ensure procedural fairness.

Judicial enforcement measures are actions taken by the courts (see Figure 4). While Officers, the CEAO and the Minister have a role in identifying and recommending cases that may be appropriate for judicial consideration, the decision to put prosecute a case rests with the Ministry of Justice and Attorney General⁶ and the decision to implement judicial sanctions rests with the court.

Figure 4 - Enforcement measures

Administrative Enforcement Measures

- Notice of non-compliance
- Warning
- Violation ticket
- Order to Prevent, Cease or Remedy
- Administrative Penalty
- Compliance Agreement
- Suspension, Cancellation and Amendment of a Certificate or Exemption Order

Judicial Enforcement Measures

- Supreme Court Order
- Penalties
- Creative sentencing
- Court order to comply
- Restitution

⁵ A copy of the *Natural Resource Compliance Act* is available on BC Laws here: http://www.bclaws.ca/civix/document/id/complete/statreg/11021_01 .

⁶ For information on how the Ministry of Justice Attorney General determines if they will prosecute a case, see “The Charge Assessment Guidelines” contained within the Crown Counsel Policy Manual available on this webpage: <https://www2.gov.bc.ca/gov/content/justice/criminal-justice/bc-prosecution-service/crown-counsel-policy-manual> .

6.1.1.1. Administrative Enforcement Measures

If an Officer determines a non-compliance is minor in nature or communication with the offender is likely to be effective in resolving the non-compliance, the Officer may decide to issue a notice of non-compliance or a warning. The purpose of these enforcement measures is to allow the offender to take corrective action without the imposition of formal sanctions. These measures serve as a record of non-compliance, forming an element of compliance history and providing information on compliance patterns and trends that can assist in the ongoing management of a project.

Notice of Non-compliance

A notice of non-compliance (notice) notifies an offender that they are out of compliance and may recommend a course of action to achieve compliance. A notice is often the first written enforcement action taken in cases of minor non-compliance where there is a high likelihood of achieving compliance.

A notice is typically issued in the inspection record. report. It will include information about what the non-compliance is and why it has been identified as being out of compliance.

Warning

Like a Notice, a warning notifies an offender that they are out of compliance. In addition, it also informs the offender of the possibility of escalating enforcement action should the non-compliance continue.

A warning is typically issued in an inspection record. It will include information about what the non-compliance is and why it has been identified as being out of compliance.

Violation Ticket

The Violation Ticket Administration and Fines Regulation under the Offense Act gives Officers the ability to issue violation tickets. Figure 5 includes a list of the offences that Officers can issue tickets for the and ticket amount.

Figure 5 - Violation tickets

Provision	Contravention	Ticket Amount
Section 6(2)	Contravene requirement contained in an environmental assessment certificate	\$575
Section 17(1)(b)	Contravene requirement contained in an exemption order	\$575

A violation ticket (VT) is issued when an Officer concludes a non-compliance has occurred and determines a notice or warning is insufficient.

A VT is issued using the standard provincial ticket form. If the VT is issued during an inspection, the VT will be noted as an enforcement action in the inspection record. VTs are only finalized after they have been paid or appealed in court and a decision rendered. If a VT is overturned by a justice of the peace, the EAO will issue an addendum to the inspection record

that will state that the offender was found to be not guilty and the VT was cancelled. The addendum will be posted on EPIC for fairness and transparency.

A VT will include:

- The section of the Act the VT is issued for;
- A description of the non-compliance;
- The name of the corporation or individual that the VT is issued to;
- The amount of the VT; and,
- Information about how to appeal the VT.

Order to Prevent, Cease or Remedy – Section 53

The CEAO has authority under section 53 of the Act to issue an order to prevent, remedy or cease for non-compliances. Officers have been delegated authority from the CEAO to be able to issue these orders. An order to prevent, cease or remedy will:

- Identify the non-compliance or the non-compliance that is likely and information about when and where the non-compliance was observed or was likely to occur;
- Clearly identify the action(s) required to prevent, remedy or cease the non-compliance; and,
- Include the date and time by which the action(s) must occur to prevent, remedy or cease the non-compliance.

There are several options available to the EAO if the order is not complied with. These include:

- The CEAO can carry out the measures required by the order and recover the costs from the offender under section 53 of the Act;
- The Minister can apply to the Supreme Court for an order to comply with the original order under section 54 of the Act;
- The Minister can suspend, cancel, or amend the certificate or exemption order under section 56 of the Act;
- The CEAO can issue an administrative penalty under section 60 of the Act; or
- The EAO can forward a case to crown counsel recommending prosecution for an offence under section 63. It is an offence under section 63 to not comply with an order issued under the Act. Crown counsel will make the final determination on whether a case is brought forward for prosecution.

Administrative Penalty – Section 60

The Administrative Penalty Regulation, brought into force on March 26, 2020, gives the EAO the ability to issue administrative penalties for prescribed contraventions of the Act or failures to comply with the Act. Figure 6 includes a list of the prescribed contraventions or failures that can issued an administrative penalty.

Figure 6 – Administrative Penalties

Prescribed Contravention or Failure	Maximum Penalty Amount
A person who contravenes section 6 (1) of the Act	Up to \$750,000
A person who fails to comply with section 6 (2) of the Act or a condition of an environmental assessment certificate	Up to \$250,000
A person who fails to comply with section 34 (5) of the Act or a requirement of an order made under the Act	Up to \$100,000
A person who fails to comply with section 10 (3), 30, or 49 (5) or (6) of the Act or who makes a statement or omits to make a statement as described in section 60 (1) of the Act	Up to \$50,000
A person who fails to comply with section 10 (1) of the Act	Up to \$2,000

An administrative penalty (AP) is a financial penalty, more commonly referred to as an administrative monetary penalty (AMP). An AP is issued when an Officer concludes a non-compliance has occurred and the CEO determines that the correct enforcement response is an AP.

Any person or corporation subject to an AP will be notified by the EAO of the intent to issue an AP. They will be provided with the information considered by the CEO, an initial penalty amount, and given an opportunity to respond to the findings prior to the issuance of the AP.

The CEO must consider a number of factors in determining the final amount of the AP, including:

- The nature of the contravention or failure;
- The real or potential adverse effect of the contravention or failure;
- Any previous contraventions or failures by, administrative penalties imposed on, or orders issued to the following:
 - The person who is the subject of the determination;
 - If the person is an individual, a corporation for which the individual is or was a director, officer or agent;
 - If the person is a corporation, an individual who is or was a director, officer or agent of the corporation;
- Whether the contravention or failure was repeated or continuous;
- Whether the contravention or failure was deliberate;
- Any economic benefit derived by the person from the contravention or failure;
- Whether the person exercised due diligence to prevent the contravention or failure;
- The person's efforts to correct the contravention or failure;
- The person's efforts to prevent recurrence of the contravention or failure;
- Any other factors that, in the opinion of the chief executive assessment officer, are relevant.

An AP is issued through a determination served under section 60 of the Act. The determination will include:

- The name of the person or corporation that is liable for the administrative penalty;

- The contravention or failure in relation to which the administrative penalty is imposed;
- The amount of the administrative penalty;
- An explanation of when and how the administrative penalty is to be paid.

Compliance Agreement – Section 55

The Minister may enter into a written compliance agreement with the holder of a certificate or exemption order, which reconfirms that the holder is legally-bound to comply with the certificate or exemption order 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 holder is willing and able to achieve compliance, but the Minister has determined that a structured approach to issues resolution is most appropriate. The agreement may set out:

- The necessary requirements to bring a project back into compliance;
- New or revised monitoring programs in response to the non-compliance;
- Requirements for certain actions to be completed or overseen by a Qualified Professional, such as an IEM;
- Requirements for consultation or information sharing with Indigenous nations, partner agencies or the public;
- Provisions for changing certain requirements (e.g. monitoring or deadlines) at the discretion of an Officer; and,
- How escalating enforcement will be applied to the holder if the non-compliance is not rectified.

If a compliance agreement is not complied with, the EAO can issue section 53 order.

Amendment, Suspension or Cancellation of a Certificate or Exemption Order – Section 56

Where the Minister has reasonable and probable grounds to believe that the Holder:

- Is in default of the requirements of:
 - A supreme court order for compliance, section 54
 - A court order to comply, section 69
 - Restitution, section 71
 - Order to prevent, remedy or cease, section 53
 - A compliance agreement, section 55;
 - One or more requirements of the certificate;
 - The Holder has been convicted of an offence; or,
 - The Holder is in default on an order to recover assessment costs, section 47.
 - The Holder fails to pay an administrative penalty, section 60

The Minister may amend or attach new conditions to a certificate, suspend all or some of the rights of a certificate, or cancel a certificate or exemption order by making an Order under Section 56, EAA.

The Minister may choose to apply a Section 56 order prior to or instead of applying to the Supreme Court for an Order. A Section 56 order cannot be issued without first giving the Holder notice of the section 56 order and an opportunity to be heard and respond to the EAO's position (Section 57 & 58, of the Act), unless the non-compliance is of an urgent nature.

Certificates or exemption orders subject to an enforcement action under this section can be reinstated or have the additional conditions attached to them canceled under section 59.

6.1.1.2. Judicial Enforcement Measures

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

Supreme Court Order – Section 54

If an order issued under the Act is not complied with, the Minister may apply to the Supreme Court for an Order to:

- Direct the person or organization to comply with the original order or restraining the person or organization from violating the order;
- Directing the directors or officers of the person or organization to cause the person or organization to comply with or cease violating the order; or,
- The Supreme Court may make an Order as it considers appropriate.

It is an offence under section 63 of the Act to not comply with an Order from the Supreme Court.

Prosecution

Offences: Section 63

Prosecution is a legal proceeding in court against a person or corporation alleged to have committed an offence. Prosecution is an important enforcement measure reserved for serious cases where other enforcement measures are unlikely to be effective or there is a need for the general deterrence that would result from a court hearing. The decision to recommend charges for prosecution to Crown Counsel is determined on a case by case basis. An offence is committed under the Act by:

- Commencing or modifying a reviewable project without a certificate or a certificate exemption (Section 6[1] or [2]);
- By refusing to produce documents, provide information or operate a thing, carry out a procedure or demonstrate a relevant skill during an inspection if requested by an Officer to do so (Section 49(5));
- By obstructing, interfering, withholding, destroying, tampering with, altering, concealing or refusing to provide anything requested by an Officer during an inspection (section 49(6));
- Not complying with a certificate or an order issued under the Act (this includes any order issued under the Act); or
- Knowingly making a false or misleading statement in a record filed or provided under the Act.

Restorative Justice

EAO C&E may pursue restorative justice instead of prosecution. For this to occur, offenders must agree to restorative justice. If EAO C&E thinks a case is appropriate for restorative justice, they will contact you to discuss this option. For more information on restorative justice see here: <https://www2.gov.bc.ca/gov/content/environment/research-monitoring-reporting/reporting/environmental-enforcement-reporting/enforcement-actions/restorative-justice>

Formal charges may be recommended by Officers, but the decision to lay a charge is the responsibility of Crown Counsel in the Criminal Justice Branch (CJB), Ministry of Justice. The CJB's charge assessment guidelines policy requires both a substantial likelihood of conviction and that a prosecution is in the public interest.

Sentencing Provisions

If a conviction is obtained through prosecution, the Court has several sentencing options available to it under the Act. These include:

- Fines and incarceration under section 65
- Creative sentencing under section 66. Section 66 of the Act enables the court to consider and implement creative sentencing provisions. These types of provisions allow for sentences which include, but are not limited to:
 - Pay the government compensation for the cost of any remedial or preventative actions taken by or caused to be taken on behalf of the government because of the commission of the offense;
 - Directs the person to perform a community service; or
 - Directs the person to post a bond or pay into the court an amount of money the court considers appropriate to ensure compliance with any prohibition, direction or requirement under this section.
- Court order to comply under section 69. This section allows the court to order the person to comply with the provision of the Act in addition to any punishment that the court may imposed because of conviction.
- Restitution under section 71. This section allows the court to order the person convicted to pay compensation or make restitution for the offense, in addition to any other penalty imposed because of conviction.

6.2. Disclosure of Enforcement Actions

All finalized inspections and enforcement actions issued by the C&E Branch are publicly posted on EPIC.

6.3. Questions

If you have questions about this document, contact the C&E Branch by e-mail at eao.compliance@gov.bc.ca or by phone 1-250-387-0131.