



Environmental
Assessment Office

Requesting a Certificate Extension

April 2016



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INTRODUCTION

The purpose of this document is to provide guidance for certificate holders who wish to apply for a one-time extension of their environmental assessment certificate.

The [Environmental Assessment Act](#) requires that an environmental assessment certificate specify a deadline (between three and five years) by which time the certificate holder must have, in the reasonable opinion of the Minister, substantially started the project or the certificate expires. If a project will not be substantially started by the certificate deadline, a certificate holder may apply for a one-time extension of the certificate for a period of up to five years.

The time limit is in place to ensure that certificate conditions do not become outdated as a result of changes over time in government policy, technical standards, scientific information, legal/regulatory expectations and other factors.

When considering a request, the Environmental Assessment Office (EAO) considers such things as the rationale for requiring an extension, the certificate holder's compliance record, and new or changed potential significant adverse effects.

Certificate holders are responsible for tracking their own certificate expiry date and applying for an extension at least nine months prior to the expiry date as set out in the [Environmental Assessment Fee Regulation](#). If a certificate extension is granted, the project must be substantially started by the new deadline or the certificate expires.

The Minister of Environment has the authority, under section 37 of the *Environmental Assessment Act*, to add new conditions to a certificate if the project is not substantially started by the deadline specified in the certificate. This allows conditions to be updated if required.

Under Section 18(2) of the *Environmental Assessment Act*, a certificate holder may apply in writing to the executive director for an extension of the deadline specified in the environmental assessment certificate, stating why the proponent wishes an extension of the deadline.

FEES

The fee for a typical certificate extension request is \$10,000. EAO will generally issue an invoice within 30 days of receipt of an extension request. For more information on fees, see [EAO Fees Overview](#) on EAO's website.

WHAT IS SUBSTANTIALLY STARTED?

A certificate extension is not required if a project is substantially started.

The term “substantially started” is not defined in the Act. Each situation is assessed in light of all relevant facts. Relevant factors include (but are not limited to):

- Has there been a significant investment of time, effort, and resources to physically develop one or more main project elements?
- Does the activity amount to a significant or important step to develop the overall project, or is the activity considered ancillary, secondary, or temporary?
- Would the proponent have undertaken the activity regardless of the project?

Additional guidance, provided by the BC Supreme Court in *Taku River Tlingit First Nation v. British Columbia (Minister of Environment) 2014*, includes:

- Based on the definition of “project” in the Act, the substantially started determination should address “primarily physical activities affecting the land environmentally, as contrasted with bureaucratic activities, for example, which do not.”¹
- “The decision maker should focus less on the permits which have been granted and the money expended, and more on what has taken place physically at the site.”
- “Temporary structures at the site, if they will soon be removed followed by remediation, are less important to consider than structures which will be in place for the duration of the project.”
- To have been substantially started, the project needs to be started “in its essentials in a real and tangible way.”
- To be considered as part of the substantially started determination, activity must have occurred after the certificate was issued and before the expiry date in the certificate.

Detailed guidance for [Substantially Started Determinations](#) is available on the EAO website.

¹ The Act defines “project” to mean any: (a) activity that has or may have adverse effects, or (b) construction, operation, modification, dismantling or abandonment of a physical work.

TIMELINES FOR APPLYING FOR A CERTIFICATE EXTENSION

Certificate holders are responsible for tracking their own certificate expiry date and applying to EAO [at least nine months prior](#) to the expiry if they will require an extension.

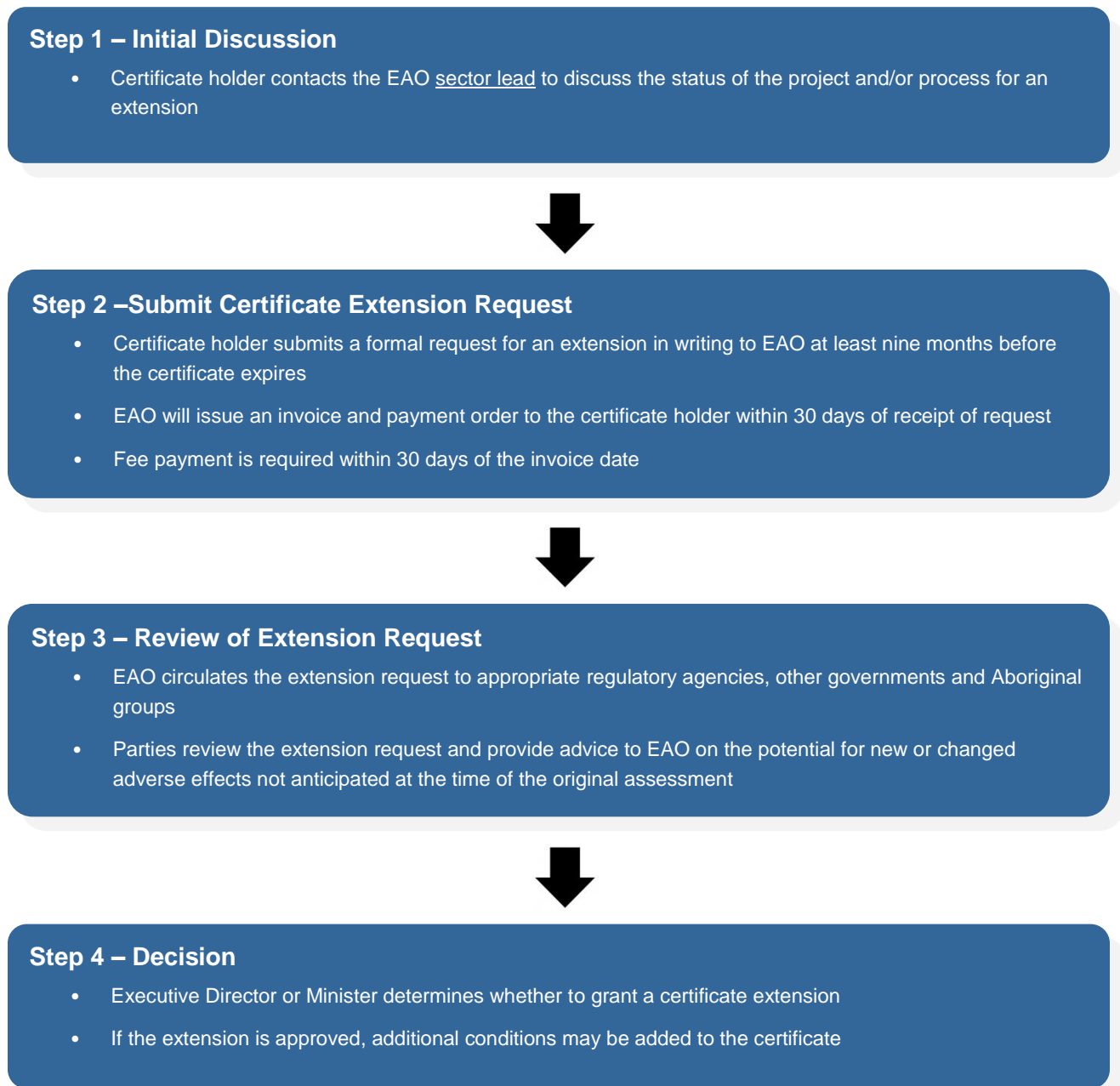
If the certificate holder is uncertain whether their project is substantially started, they may contact the appropriate [sector lead at EAO](#) to discuss the status of their project and whether it is currently substantially started.

Requests for an extension should be directed to the Executive Director of EAO in writing, and must thoroughly answer all questions as outlined in Step 2 of the process set out in this guide.

The Executive Director has the discretion to accept a formal request made less than nine months before the certificate deadline if satisfied that sufficient time remains to appropriately review the application (as outlined in the [Environmental Assessment Fee Regulation](#)).

THE PROCESS

FIGURE 1 – CERTIFICATE EXTENSION PROCESS OVERVIEW



PROCESS STEPS

STEP 1

Before submitting a certificate extension request, EAO recommends that the certificate holder contact the appropriate [sector lead at EAO](#) for an initial discussion about status of the project and/or the extension process.

STEP 2

For projects requiring an extension, the certificate holder submits a formal request in writing to EAO. The request must thoroughly answer the following questions in order to be accepted:

- Why do you wish to extend the certificate and why is project development delayed?
- What work have you done to advance the project?
- What plans, including timelines, do you have for advancing the project if the certificate is extended?
- Has new information come to light since the original certificate was granted that could impact the conclusions reached in the certificate? This could include:
 - new scientific and technical information;
 - physical changes to the airshed, watershed or landscape;
 - previously unknown or undetected effects; or
 - new information regarding Aboriginal interests.

An invoice and payment order will be issued within 30 days of receipt of the request. The certificate holder will have 30 days from the date of the invoice to remit payment. If fees are outstanding, EAO may refuse to consider the request further.

The request will be posted to [EAO's electronic project information center \(ePIC\)](#). An EAO project lead will be assigned to lead the review.

STEP 3

EAO will circulate the extension request to appropriate regulatory agencies, other governments and Aboriginal groups for comment. This may include agencies and Aboriginal groups represented on the original working group for the project and could also include additional parties.

The parties will be asked to review the information provided by the certificate holder, provide input on the potential for new or changed adverse effects since the environmental assessment for the project, and recommend any new mitigation measures that may be required. This will take into consideration relevant new statutes, regulations, case law, policy, practices or guidelines that have arisen since the granting of the certificate. The timeline for this is at the discretion of the project lead, but is generally three to five weeks.

EAO will consider the comments received and resolve issues as required, including identifying any additional conditions that may be necessary. Where appropriate the certificate holder will be given an opportunity to respond.

STEP 4

EAO will refer the assessment to either the Executive Director or the Minister for a decision. Based on the information provided, the Executive Director or Minister will determine whether to grant a certificate extension and, if so, whether additional or revised conditions are required.

EAO will advise the certificate holder and other potentially affected parties of the decision. All relevant materials will be posted on EAO's website.

EAO CONTACT INFORMATION

If you have any questions or comments about certificate extensions or require additional information about the environmental assessment process, please contact us at:

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