

# Indigenous Nation Guide to EAO Compliance and Enforcement

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**EAO**

Environmental  
Assessment Office

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## 1.0 PURPOSE

This guide summarizes how the Compliance and Enforcement Branch (C&E) of the BC Environmental Assessment Office (EAO) operates and how C&E will work to engage Indigenous Nations (Nations) in the conduct of compliance and enforcement activities for projects with Environmental Assessment Certificates (EACs) or Exemption Orders under the *Environmental Assessment Act* (the Act). Additional information regarding how EAO C&E works with Indigenous Nations during the conduct of site inspections of Act regulated projects can be found in [Inspections with EAO Compliance and Enforcement – A Guide for Indigenous Nations](#).

## 2.0 THE ENVIRONMENTAL ASSESSMENT OFFICE

If a proposed project within British Columbia meets or exceeds the thresholds specified in the [Reviewable Projects Regulation](#), the Act requires the project to undergo an Environmental Assessment (EA) prior to construction. EAs are conducted by the EAO, a neutral regulatory agency within the provincial government. During an EA, the EAO seeks input from Nations, proponents, the public, consultants, and all levels of government to assess the potential environmental, economic, social, cultural and health effects that may occur during the life of a project. This information is used to develop measures to prevent or reduce significant adverse effects from the project.

The EAO follows a clearly defined process under the Act to conduct EAs. The findings are detailed in an Assessment Report. Once complete, the Assessment Report is reviewed by the Minister of Environment and Climate Change Strategy and the Minister responsible for the sector in which the project falls (e.g. a mining project would be referred to the Minister of Energy, Mines and Petroleum Resources) and they decide on whether the project should proceed. If a decision to proceed is made, an Environmental Assessment Certificate (EAC) is issued. Sometimes a project is exempted from the requirement to undergo an EA and an Exemption Order is issued. EACs and Exemption Orders are legally binding documents that specify how a project may be constructed, operated, and decommissioned. Once an EAC or Exemption Order is issued, EAO C&E refers to the former proponents of the project as “Holders” because they now hold an approval under the Act.

### 2.1. Compliance and Enforcement Branch

The EAO Compliance and Enforcement Branch is a neutral compliance and enforcement agency tasked with conducting inspections and other activities to determine compliance with the requirements of the Act, EACs and Exemption Orders. Ultimately the program is designed to provide assurance to the public and Nations that projects regulated by the Act are constructed, operated, and decommissioned in accordance with the EAs conducted for those projects. See the [Compliance and Enforcement Policy and Procedures](#) document for more information on how EAO C&E operates.

To support the reconciliation objectives of the Act, C&E wishes to enhance the effectiveness and transparency of compliance oversight through the engagement of Nations in the conduct of compliance and enforcement activities within their traditional territories and treaty lands. The program focuses on two primary objectives:

- Objective 1: Engage with Indigenous Nations on all Act regulated projects within the Nation’s respective traditional territory or treaty lands.
- Objective 2: Establish formal dialogue with Indigenous Nations throughout the inspection process and encourage Indigenous participation in inspections.

## 3.0 ENGAGEMENT

After the proponent is issued an EAC or Exemption Order and steps are taken towards the construction, operations, or decommissioning of a project, EAO C&E conducts compliance and enforcement measures to ensure Holders are meeting their obligations under the Act. These obligations are legally enforceable throughout the life of the project. By engaging early with Nations, EAO C&E will work to ensure that that Nations can communicate effectively with C&E as the project evolves.

In the past EAO C&E has worked informally with Nations throughout the province on various projects and programs, both independently and in collaboration with other regulators. This new engagement process will remain flexible to accommodate the interests of the Nation and provide a formal structure to facilitate engagement, increase EAO C&E's accountability to Nations, support consistency of practice across the province, and provide continuity of engagement with Nations throughout the life of a Project.

In recognition of the desire of Nations to engage in some capacity with C&E, this program is:

- Tailored to the specific interests of the Nation and its capacity to participate in compliance oversight activities; and,
- Includes formalized procedures to inform Nations on compliance and enforcement activities.

### 3.1. Objective 1: Engage with Indigenous Nations on all Act regulated projects within the Nations respective traditional territory or treaty lands.

This objective is focused on facilitating communication between EAO C&E and Nations, ensuring Nations are aware of EA Act regulated projects within their traditional territories or treaty lands, and ensuring EAO C&E understands the interests and concerns of Nations regarding those projects in relation to compliance and enforcement. The procedure illustrates how the engagement and inspection participation programs are intended to work together. This process is intended to be flexible. Details on how it will be delivered will be determined in collaboration with each Nation.

Initially EAO will communicate with Nations to establish a discussion and schedule for follow up communication. Once communication has been established and subject to an individual Nations interest, EAO will do the following:

- a. Provide Nations with a summary of each certified project within the Nations' traditional territory or treaty lands. The summary will include:
  - i. Project status, including Certificate or Exemption Order requirements;
  - ii. A summary of compliance activities to date; and,
  - iii. A summary of enforcement actions to date.
- b. Work with Nations to determine compliance priorities on each project.
- c. Determine the Nation's interest in collaborating with EAO C&E on engagement and inspection activities, including:
  - i. Field participation procedures, including expectations for participation in inspections as outlined in the "Inspections with Indigenous Nations" guide;
  - ii. Protocols for information sharing; and,
  - iii. Planning upcoming inspections, including timing and frequency:

This procedure will ensure that Nations are kept informed of what is occurring on projects regulated by the Act and ensure that the EAO is informed and responsive to the interests brought forward by the Nation regarding these projects.

There are currently in excess of 300 projects with EACs or Exemption Orders issued under the Act. Approximately 135 of these have proceeded to construction, operations, or have been decommissioned (collectively considered “active”). EAO C&E will work to identify and document Nation interests on active projects. This process will aid in planning inspections and facilitating Nation involvement in them.

### **3.2. Objective 2: Establish formal dialogue with Indigenous Nations throughout the inspection process and encourage Indigenous participation in inspections.**

This objective is to facilitate Indigenous Nation participation in inspections of projects regulated by the Act. “[Inspections with EAO Compliance and Enforcement – A Guide for Indigenous Nations](#)” provides detailed information regarding the opportunities and expectations associated with the inspection process.

EAO C&E retains Compliance and Enforcement Officers (C&E Officers) and Indigenous Liaison Officers (Liaison Officers). C&E Officers conduct inspections and Liaison Officers work with both Indigenous Nations and C&E Officers to ensure that Nations are involved in EAO inspections to the greatest extent practicable. Participation is seen by C&E as a critical aspect that links the consultation, certificate requirements and field verification processes together in a transparent and effective manner.

Liaison Officers will communicate with Nations as early as possible in advance of the inspection. This will support:

- Scheduling and logistics of Nation participation;
- Building the inspection plan to incorporate Nation interests; and,
- Ensuring safety of all participants during the inspection.

Field participation by Indigenous Nations during inspections may not be possible for a variety of reasons. Regardless of whether a Nation participates in an inspection, EAO will report inspection findings to them in a timely manner. EAO C&E will also document all activities and communications between the Nation and C&E during the lifecycle of the project.

#### **3.2.1. The Aboriginal Liaison Program (ALP)**

In addition to the processes outlined in this document, the EAO maintains dialogue with Nations on compliance oversight activities through the ALP. The ALP is a successful, government-funded program that allows Nations in northern BC to participate in compliance monitoring activities with natural resource agencies. The EAO is a participating agency and, through agreements with Indigenous nations, is obligated to support and provide leadership for this program whenever possible. EAO C&E participates in ALP meetings, training, and program development opportunities and uses the ALP to facilitate Indigenous involvement in EAO inspections.

The Indigenous engagement program described previously in this document is intended to work as seamlessly as possible with both ALP and non-ALP Nations.

The ALP enables the EAO to implement an efficient inspection program that focuses on the interests of the Nation, rather than logistical considerations such as liability, safety, training, cost and capacity. Included in the ALP is a process for Nations to report back to their communities, other nations and regulators. Currently, the ALP program is under review by government with funding provided annually.

## 4.0 SUPPORT EAO INDIGENOUS RELATIONS AND ENVIRONMENTAL ASSESSMENT ACT (2018) INITIATIVES

On December 16, 2019 the 2002 *Environmental Assessment Act* was repealed and replaced with the 2018 *Environmental Assessment Act*. The C&E provisions in Part 7 of the 2018 Act apply to all Holders and proponents of reviewable projects, regardless of when their authorization was granted.

The 2018 Act gives EAO's Chief Environmental Assessment Officer authority to grant Indigenous Nations C&E authorities under the Act.

## 5.0 ADDITIONAL INFORMATION

For additional information on how C&E will work with Indigenous Nations in compliance and enforcement, please contact C&E via email at [eao.compliance@gov.bc.ca](mailto:eao.compliance@gov.bc.ca) or phone 250-387-0131.