

An Audit of the Environmental Assessment Office’s Oversight of Certified Projects

As at: August 28, 2012

Released: 7 July 2011

Discussed by the Public Accounts Committee: 16 November 2011

Self-assessment conducted by the Environmental Assessment Office

The Environmental Assessment Office (EAO) is pleased to provide this update on progress made implementing the recommendations provided by the Office of the Auditor General in its 2011 report on EAO’s oversight of environmental assessment (EA) certified projects. EAO has made the enhancement of its Compliance and Enforcement Program a top priority and is actively working with other government agencies to enhance oversight of EA certified projects.

EAO accepted all six of the report’s recommendations and has made significant progress at acting upon them. To date, EAO has fully or substantially implemented four of the recommendations, and partially implemented two recommendations. It is EAO’s goal to fully or substantially implement all six of the report’s recommendations by April 2013.

EAO is addressing and going beyond the audit report’s recommendations by implementing a comprehensive Compliance and Enforcement Program and initiating work on an Effectiveness Management Program.

The goal of EAO’s Compliance and Enforcement Program is for EAO to be independently and objectively confident that EA certificate conditions are being met. The objectives of this program are: (1) EAO ensures that compliance management is addressed throughout EA, and certificate conditions are measurable and enforceable; (2) EAO manages a comprehensive Compliance and Enforcement Program and coordinates with other agencies to promote compliance and enforce when necessary; and, (3) information about EAO’s Compliance and Enforcement Program and actions are readily available to the public.

The goal of EAO’s Effectiveness Management Program is for EAO to be independently and objectively confident that measures to prevent or reduce adverse effects of EA certified projects are effective. The objectives of this program are to ensure EAO is independently confident: (1) in the credentials and expertise of the professionals who are evaluating the effectiveness of measures to prevent or reduce (i.e., “mitigation measures”) adverse effects of EA certified projects; (2) in the quality of the effectiveness evaluations being conducted on EA certified projects; (3) that adaptive measures are being employed when necessary to ensure mitigation measures are effective; and, (4) that feedback systems are in place so that effectiveness evaluation data is used to understand and improve the effectiveness of mitigation measures prescribed during future EAs.

Recommendations

RECOMMENDATION AND SUMMARY OF PROGRESS	SELF-ASSESSED STATUS
<p>Recommendation 1: The Environmental Assessment Office ensure commitments are clearly written in a measurable and enforceable manner.</p>	<p>Fully or substantially implemented</p>
<p>Actions taken, results and/or actions planned</p>	
<p>EAO has revised its policy for drafting EA certificate conditions (formerly known as “commitments”) to ensure they are consistently measurable and enforceable. All draft certificate conditions are reviewed by EAO’s compliance staff, compliance staff of other agencies, and legal counsel, to ensure they are measurable and enforceable.</p>	
<p>An example of an EA certificate condition that would not be easily measured, and therefore enforced, is: “Access roads should not impact ungulate mineral licks, as practical.” Following EAO’s current policy, an example of how this condition could be rewritten to ensure it is measurable and enforceable, is: “Prior to finalizing access road locations, surveys must be conducted by a registered professional biologist to identify the locations of any ungulate mineral licks along the proposed access road route. The access road must not be constructed within 200 metres of any ungulate mineral licks that are identified during the surveys.”</p>	

Recommendations (Cont.)

Recommendation 2: The Environmental Assessment Office continue to work with the Ministry of Environment to finalize a policy framework that will provide provincial guidance on environmental mitigation.

Fully or substantially implemented

Actions taken, results and/or actions planned

This important policy initiative is being led by the Ministry of Environment. EAO has participated in the development of this policy since its origin and continues to do so.

The Ministry of Environment, along with EAO, and other natural resource management agencies, are developing this policy to support a consistent approach to mitigating adverse effects to environmental values resulting from development projects and activities. The policy and associated procedures have three intended audiences: provincial staff in the natural resource sector who provide advice and make recommendations to proponents and statutory or delegated decision-makers; proponents who develop mitigation plans to prevent or reduce the environmental impacts of their proposed activities; and, decision-makers to consider in the process of making resource management decisions.

The Ministry of Environment and EAO are conducting trial applications of the policy and its procedures. During the trial period, which is expected to be complete at the end of the 2012/13 fiscal year, an evaluation will be conducted to revise and refine the policy and procedures and inform options for future implementation.

Recommendation 3: The Environmental Assessment Office clarify the post-certification monitoring responsibilities and compliance mechanisms for each commitment.

Fully or substantially implemented

Actions taken, results and/or actions planned

EAO is clarifying and coordinating compliance agency inspection, investigation, and enforcement roles and responsibilities for each certificate condition of EA certified projects by developing “compliance management plans” for EA projects. These plans eliminate any gaps in oversight and ensure that duplicative compliance efforts are avoided in order to make best use of government compliance and enforcement resources. As of May 2012, these plans are being developed for every proposed project that is referred to ministers for decision at the culmination of the EA process. Compliance management plans will also be developed for previously certified projects.

In addition to clarifying compliance and enforcement roles for each specific project, EAO chairs an interagency compliance and enforcement committee that identifies and implements collaborative compliance and enforcement strategies for all EA certified projects.

Recommendations (Cont.)

Recommendation 4: The Environmental Assessment Office develop and implement a comprehensive compliance and enforcement program that includes an integrated information management system to monitor project progress and ensure compliance.

Fully or substantially implemented

Actions taken, results and/or actions planned

When the audit was initiated, EAO did not have any dedicated compliance and enforcement staff. While the audit was being conducted, EAO established a Policy and Quality Assurance Unit, consisting of 4 full time staff, whose responsibilities include the enhancement of EAO's approach to compliance and enforcement. Following the issuance of the audit report, EAO expanded its Policy and Quality Assurance Unit further. Additional compliance specialists have been added, and there are now 5 full time and one temporary positions dedicated to establishing and managing EAO's Compliance and Enforcement Program, including the conduct of compliance and enforcement activities such as inspections and investigations. In addition to EAO's dedicated compliance and enforcement staff, staff of the Ministry of Forests, Lands and Natural Resources Compliance and Enforcement Branch (169 staff) have been authorized under the Environmental Assessment Act to inspect EA certified projects for compliance with EA certificate requirements. These staff support the implementation of compliance management plans for certified projects.

EAO has developed and is implementing a comprehensive Compliance and Enforcement Program that addresses the Auditor General's recommendations. The program has been designed with input from a consulting firm, other government agencies (e.g., Ministry of Environment; Ministry of Forests, Lands and Natural Resource Operations; Ministry of Energy and Mines), and by incorporating leading practices from other jurisdictions, such as Australia and the United Kingdom. Additional input has been received through various outreach activities, including sessions with senior environmental assessment administrators from across Canada; the International Association for Impact Assessment; and, the British Columbia College of Applied Biology.

As noted above, the goal of EAO's Compliance and Enforcement Program is for EAO to be independently and objectively confident that EA certificate conditions are being met. To support the realization of this goal, the program integrates compliance management throughout both the pre-certification and post-certification phases of the EA process. Components of the program include: interagency coordination; measurable and enforceable EA certificate conditions; compliance promotion; oversight of proponent self-monitoring; proactive compliance inspections and audits, investigations, and enforcement; an interagency information management system to track compliance inspection information; and, making outcome information available to the public. All of these program components are currently being implemented, and there are plans to make more compliance and enforcement information available to the public in the coming year than is currently made available.

Recommendation 5: The Environmental Assessment Office conduct post-certificate evaluations to determine whether environmental assessments are avoiding or mitigating the potentially significant adverse effects of certified projects.

Partially implemented

Actions taken, results and/or actions planned

Post-certificate evaluations that identify the extent to which the mitigation measures included in EA certificate conditions are avoiding or mitigating potentially significant adverse effects have been, and continue to be, conducted on several EA certified projects. The need for such evaluations is identified on a case-by-case basis in instances where there is uncertainty about the effectiveness of mitigation measures for specific types of potential project effects. These evaluations often employ an adaptive management approach by evaluating the effectiveness of mitigation measures and prescribing alternate or enhanced mitigation measures to act on opportunities to better mitigate adverse effects. Findings of these evaluations are used to inform current and future EAs.

These evaluations will continue to be identified and prescribed in EA certificates on a case-by-case basis. In addition, EAO will be initiating work in the fall of 2012, in collaboration with other agencies, to develop EAO's Effectiveness Management Program, which will increase the frequency of effectiveness evaluations and provide better means of tracking evaluation results.

Recommendations (Cont.)

Recommendation 6: The Environmental Assessment Office Provide appropriate accountability information for projects certified through the environmental assessment process.

Partially implemented

Actions taken, results and/or actions planned

EAO provides extensive information about proposed and EA certified projects on its website, including monitoring and compliance reports, and was doing so prior to the audit. EAO is currently evaluating the best methods of reporting additional compliance information to the public. By April 2013, EAO will be providing additional information on compliance and enforcement activities and effectiveness evaluations at a level of detail that is comparable with leading practices of other jurisdictions.

An example of additional information that is being made available to the public as a result of the audit is a new performance measure that was added to EAO's 2012/13 Service Plan setting a goal for the number of compliance inspections (10 inspections) that will be carried out during the 2012/13 fiscal year. In its 2012/13 Service Plan Report, EAO will report to the public on its performance in relation to this goal. Additional performance measures related to compliance and enforcement will be identified in future EAO Service Plans.