



Compliance and Enforcement Policy under the *Canadian Environmental Assessment Act, 2012*

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Document Information

Disclaimer

This policy is not a substitute for the *Canadian Environmental Assessment Act, 2012*. In the event of an inconsistency between this document and the *Canadian Environmental Assessment Act, 2012*, the statute prevails.

Updates

This document may be reviewed and updated periodically. To ensure that you have the most up-to-date version, please consult the [Compliance and Enforcement page](#) of the Canadian Environmental Assessment Agency's website.

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Introduction and Purpose

The Canadian Environmental Assessment Agency (the Agency) is a federal body accountable to the Minister of the Environment that serves as the centre of expertise for federal environmental assessment. The *Canadian Environmental Assessment Act, 2012* (CEAA 2012) and its regulations establish the legislative basis for federal environmental assessments in most regions of Canada. The Agency is responsible for the administration of CEAA 2012 including promoting, monitoring and facilitating compliance with CEAA 2012.

Proponents of designated projects must meet requirements set out in CEAA 2012 and any decision statement issued by the Minister of the Environment. Compliance with CEAA 2012, its regulations and decision statements is mandatory.

The purpose of this policy is to describe the Agency's approach to compliance with and enforcement of CEAA 2012. This policy is intended to promote a consistent and transparent approach to compliance with and enforcement of CEAA 2012.

Note that this policy applies solely to the Agency and not to any other responsible authority under CEAA 2012. The Agency only enforces CEAA 2012 requirements of those designated projects for which it is the responsible authority.

The terms "compliance" and "enforcement" are important for understanding the approach being taken by the Agency. It is therefore useful to make their meanings clear in the context of CEAA 2012.

"Compliance" means the state of conformity with CEAA 2012. The Agency's role in compliance with CEAA 2012 is through two types of activities: promotion and enforcement. Measures to promote compliance include offering education and training opportunities, doing outreach, providing information, and consulting and engaging stakeholders and proponents whose designated projects are subject to CEAA 2012.

"Enforcement" means the verification of compliance with CEAA 2012, to compel compliance or respond to alleged or potential contraventions. Enforcement measures include inspections, investigations and enforcement actions, such as written warnings, orders and prosecution.

The Principles and Expectations that Guide Compliance and Enforcement

The following general principles govern the Agency's application of CEAA 2012 with respect to compliance promotion and enforcement:

- The Agency fosters compliance by communicating CEAA 2012 requirements in a clear, transparent manner.
- The Agency is transparent about compliance and enforcement activities by sharing information with the public.
- The Agency applies CEAA 2012 in a manner that is fair, predictable and consistent.
- The Agency undertakes compliance and enforcement activities to prevent adverse environmental effects.
- The Agency examines suspected contraventions of CEAA 2012 of which it has knowledge and takes appropriate action consistent with this Compliance and Enforcement Policy.
- The Agency encourages the reporting of suspected contraventions of CEAA 2012 via email at compliance.conformite@ceaa-acee.gc.ca

The following are the Agency's expectations of proponents with respect to complying with CEAA 2012. Proponents are expected to:

- comply with the obligations and the prohibitions of CEAA 2012;
- provide input on potential conditions for decision statements when published for public comment;
- seek clarification when unsure about CEAA 2012 requirements;
- monitor their own compliance with all environmental requirements that apply to their designated projects;
- correct any non-compliance that they discover on their own; and
- correct any non-compliance upon discovery by a CEAA 2012 enforcement officer.

The Fundamentals of CEAA 2012 in Relation to Compliance and Enforcement

CEAA 2012 and its regulations establish the legislative basis for federal environmental assessments that take place in most regions of Canada. Environmental assessment is a planning and decision-making tool that is intended to:

- minimize or avoid adverse environmental effects before they occur; and
- incorporate environmental considerations into decision making.

For the purpose of enforcement of CEAA 2012, the Minister of the Environment has the power to designate persons or a class of persons under section 89 of the Act. Those designated persons are referred to as CEAA 2012 enforcement officers.

The Agency enforces CEAA 2012 only for designated projects for which the Agency is a responsible authority. The Canadian Nuclear Safety Commission and the National Energy Board are responsible for enforcing any CEAA 2012 conditions that are included in licenses or certificates that they issue, where applicable.

The Agency and CEAA 2012 enforcement officers base their enforcement actions on the requirements of CEAA 2012, categorized as obligations and prohibitions. These are the things a proponent of a designated project must undertake and must not undertake. The obligations and prohibitions are in place from before an environmental assessment begins, during the conduct of the environmental assessment to after the completion of the environmental assessment. They are described below in relation to each phase of the environmental assessment process.

Pre-Environmental Assessment

The *Regulations Designating Physical Activities* under CEAA 2012 identify the physical activities that constitute the designated projects that may require an environmental assessment. Proponents of a designated project that falls under the Agency's authority must submit to the Agency a project description that contains all of the information prescribed by the *Prescribed Information for the Description of a Designated Project Regulations*. If the Agency is of the opinion that a project description received from a proponent is incomplete or does not contain sufficient details, the Agency may require the proponent to submit an amended description containing the information and details specified by the Agency. Once a complete project description is received, the Agency then determines from the project description whether or not an environmental assessment is required.

The Minister of the Environment may require an environmental assessment of a physical activity that is not a designated project as per the *Regulations Designating Physical Activities*. In this case, the proponent must provide information in relation to that physical activity, when requested to do so by the Minister.

The proponent must not carry out any part of a designated project that may cause an environmental effect (as defined in subsection 5(1) of CEAA 2012), unless the Agency has decided that an environmental assessment of the designated project is not required.

During the Conduct of the Environmental Assessment

Should the Agency determine during the conduct of the environmental assessment that existing information is insufficient it can ask for additional information. The proponent must collect information and/or conduct a study that the Agency requires.

The proponent must not carry out any part of the project that may cause an environmental effect (as defined in subsection 5(1)), unless a decision statement has been issued and the proponent is in compliance with its conditions.

After Completion of the Environmental Assessment

After taking into account the environmental assessment report in respect of a designated project for which the Agency is the responsible authority, the Minister of the Environment determines whether the designated project is likely to cause significant adverse environmental effects, taking into account mitigation measures that the Minister considers appropriate. If it is determined that a designated project is likely to cause significant adverse environmental effects, the Governor in Council (Cabinet) will decide whether the effects are justified in the circumstances. In the case of significant adverse effects that are justified or in the case that significant adverse effects are unlikely, the Minister of the Environment issues a decision statement that sets out the decision and contains conditions with which the proponent must comply. The conditions include mitigation measures, as well as measures to verify the accuracy of the environmental assessment and determine the effectiveness of the mitigation measures.

The proponent must comply with the conditions of the decision statement issued by the Minister of the Environment. Compliance with those conditions is a principle requirement of CEAA 2012 towards which most of the Agency's compliance promotion and enforcement efforts are directed.

The proponent must comply with the decision statement to carry out any part of a designated project that may cause an environmental effect (as defined in subsection 5(1) of CEAA 2012).

Every person in a place that is being inspected by a CEAA 2012 enforcement officer and the owner or person in charge of the place must give all reasonable assistance to a CEAA 2012 enforcement officer to carry out the inspection and to exercise their powers or perform their duties and functions under CEAA 2012.

Any person subject to an order issued under subsection 94(1) of CEAA 2012 must comply with the order. For example, section 94 allows a CEAA 2012 enforcement officer to order a person to stop a contravention.

No person, including the proponent, may obstruct or hinder a CEAA 2012 enforcement officer from exercising their powers or performing their duties and functions under CEAA 2012.

No person, including the proponent, may knowingly make a false or misleading statement, or knowingly provide false or misleading information in connection with any matter under CEAA 2012 to any person who is exercising their powers or performing their duties and functions under CEAA 2012.

How the Agency Raises Awareness and Promotes Compliance with CEAA 2012

The Agency raises awareness of CEAA 2012 requirements by offering education and training opportunities, doing outreach, and providing information. The goal of these activities is to promote compliance, to deter future non-compliance and increase awareness of CEAA 2012 requirements.

Accordingly, the Agency undertakes activities such as:

- holding information sessions on CEAA 2012, its provisions and regulations;
- issuing publications, including technical guides for proponents and environmental assessment professionals to assist in conducting environmental assessments that meet CEAA 2012 requirements;
- participating in seminars and conferences to provide information on CEAA 2012;
- communicating with proponents throughout the EA process to provide information that will support their compliance with CEAA 2012; and
- providing proponents with an opportunity to provide comments on potential conditions to be recommended to the Minister for incorporation in a decision statement.

Compliance promotion is also a part of the Agency's day-to-day business. This includes sharing information about CEAA 2012 during meetings with proponents, federal departments and agencies, provinces, territories, Aboriginal governments and Aboriginal people, industry, environmental groups and other interested parties.

While the Agency engages with proponents of designated projects subject to CEAA 2012, the responsibility for compliance rests with proponents.

Promotion of compliance with CEAA 2012 is carried out by Agency employees. A large component of compliance promotion is undertaken by environmental assessment experts in regional offices and at headquarters.

Those employees undertaking enforcement activities, due to the nature of their responsibilities for verifying compliance with CEAA 2012 and investigating suspected contraventions, limit their compliance promotion activities to:

- directing proponents and the public to the Agency website which has various sources of information about CEAA 2012; and
- providing copies of CEAA 2012, its accompanying regulations, decision statements and copies of this policy.

The Responsibilities of CEAA 2012 Enforcement Officers

CEAA 2012 enforcement officers are responsible for enforcing CEAA 2012 requirements. They are “designated persons” under section 89 of CEAA 2012. Through this designation, CEAA 2012 enforcement officers can:

- carry out inspections in relation to designated projects to verify compliance with CEAA 2012 and decision statements;
- issue an order directing corrective measures where there is an alleged contravention of CEAA 2012 and/or its accompanying regulations and/or the conditions in a decision statement;
- take other measures to compel compliance, such as issuing written warnings, issuing orders, directions and prohibitions under section 90 of CEAA 2012, issuing orders under section 94 of CEAA 2012;
- investigate suspected contraventions; and
- undertake measures to compel compliance through court action, such as injunctions and prosecution.

How the Agency Verifies Compliance and Detects Alleged Contraventions

Inspections are used by CEAA 2012 enforcement officers to verify compliance and/or prevent non-compliance. An inspection can be on-site or off-site.

CEAA 2012 enforcement officers carry out inspections:

- in accordance with the Agency's annual inspection plan;
- as required when information is submitted to the Agency by proponents in accordance with conditions in a decision statement;
- on the basis of information received from the public, federal entities and/or provincial entities about a designated project; or
- on the basis of their own information-gathering.

On-site inspections are conducted at the place where the designated project is being carried out; or where a record or anything relating to the designated project is located, such as the office or other premises of the proponent or of a third party. Alternatively, off-site inspections are conducted from the office of the CEAA 2012 enforcement officer and include reviewing reports submitted by a proponent.

In the course of an on-site inspection, a CEAA 2012 enforcement officer may, for example:

- examine anything at or in the inspection site;
- use any means of communication in the inspection site or cause it to be used;
- use any computer system in the inspection site, or cause it to be used, to examine data contained in or available to it;
- use any copying equipment in the inspection site or cause it to be used;
- remove anything from the inspection site for examination or copying;
- take photographs and make recordings or sketches;
- direct that machinery, vehicles and/or equipment be put into operation or be shut down; and
- control access to all or part of the inspection site.

An investigation occurs where a CEAA 2012 enforcement officer finds an alleged contravention and gathers evidence to confirm whether or not there is a contravention. If, during an inspection, a CEAA 2012 enforcement officer discovers an alleged contravention, they may shift to an investigation and inform the proponent or the person in charge of the site where the inspection is being carried out.

Coordination with Other Government Authorities

Decision statements for designated projects for which the Agency is a responsible authority may contain conditions that are similar or identical to those set out in an authorization, licence or other approval issued by another federal authority or provincial body. In such cases, the Agency coordinates, whenever possible, inspections and investigations by CEAA 2012 enforcement officers with the other federal or the provincial entity.

How CEAA 2012 Enforcement Officers Respond to Alleged Contraventions

When CEAA 2012 enforcement officers discover an alleged contravention, they consider the following factors to decide what measures to take in order for the proponent of a designated project to return to compliance:

- **Nature of the alleged contravention**—This includes consideration of the seriousness of the harm or potential harm, the intent of the alleged offender, whether this is a repeated occurrence and whether there are attempts to conceal information or otherwise subvert the objectives and requirements of CEAA 2012.
- **Effectiveness in achieving the desired result with the alleged offender**—The desired result is compliance with CEAA 2012 within the shortest time possible and with no further contravention. Factors to be considered include:
 - the alleged offender's history of compliance with CEAA 2012;
 - willingness to cooperate with CEAA 2012 enforcement officers;
 - evidence of corrective action already taken by the alleged offender; and
 - the existence of enforcement actions under other statutes by other federal authorities or by provincial, territorial or Aboriginal governments as a result of the same activity.
- **Consistency in enforcement**—CEAA 2012 enforcement officers intend to achieve consistency in their enforcement actions. Accordingly, CEAA 2012 enforcement officers consider how similar situations were handled when deciding what enforcement action to take.

While each situation of alleged contravention of CEAA 2012 is different, the most important factor in determining an enforcement action is the effectiveness in securing compliance as quickly as possible with no further contravention.

Measures to be Taken in the Event of Alleged Contraventions of CEAA 2012

When CEAA 2012 enforcement officers have reasonable grounds to believe that a contravention has occurred, various enforcement actions are available to restore compliance.

Written Warnings

Written warnings are used to warn a proponent about an incident of alleged contravention and include details on compliance requirements. Written warnings are used by CEAA 2012 enforcement officers only where there is minimal or no harm to the environment; they merely point out an alleged contravention. Written warnings are an administrative tool and do not contain measures to compel an alleged offender to return to compliance. They are intended to encourage a proponent to come into compliance and to deter the proponent from future contraventions.

Orders, Directions, and Prohibitions under section 90 of CEAA 2012

Orders, directions, and prohibitions under section 90 of CEAA 2012 are used during on-site inspections to prevent non-compliance. While conducting an on-site inspection CEAA 2012 enforcement officers may:

- order a person to stop or start an activity;
- order a person to not move or to restrict the movement of objects;
- direct a person to put machinery into operation or to cease its operation; and
- prohibit or limit access to any or all areas.

Orders under section 94 of CEAA 2012

Orders under section 94 of CEAA 2012 are used when there has been a contravention of CEAA 2012 that has caused an adverse environmental effect or that may cause an adverse environmental effect. The written order includes the reason for the order, and the time and manner in which it must be carried out. Orders issued by CEAA 2012 enforcement officers under section 94 direct an alleged offender to return to compliance through measures set out in the order. Among other things, an order can direct a person to:

- stop any activity that is in contravention of CEAA 2012 or to cause it to be stopped;
- take any measure that is necessary to comply with CEAA 2012 or to mitigate the effects of the alleged non-compliance; or
- do both.

Injunctions under section 96 of CEAA 2012

Injunctions are court orders. They are administrative in nature, and do not impose a punishment, such as a fine. Under CEAA 2012, injunctions are used to stop a person that has done, is about to do, or is likely to do anything that is considered an offence under section 99 of CEAA 2012. This includes:

- carrying out part of a designated project that may cause an environmental effect (as defined in subsection 5(1) of CEAA 2012) without complying with the conditions of a decision statement;
- carrying out part of a designated project that may cause an environmental effect (as defined in subsection 5(1) of CEAA 2012) without the Agency determining whether an environmental assessment is required;
- carrying out part of a designated project that may cause an environmental effect (as defined in subsection 5(1) of CEAA 2012) while an environmental assessment is underway;
- failing to comply with an order under section 94 of CEAA 2012;
- obstructing or hindering a CEAA 2012 enforcement officer from exercising their powers or performing their duties and functions under the Act; and
- making a false or misleading statement or knowingly providing false or misleading information to a person exercising their powers or performing their duties and functions under the Act that may lead to or has resulted in adverse environmental effects.

The Minister of the Environment is responsible for applying for an injunction and the courts for issuing them. The courts may issue an injunction ordering a person to:

- refrain from doing anything that may be considered an offence or be directed towards the commission of an offence; or
- do an act that may prevent the commission of an offence.

Prosecution

CEAA 2012 enforcement officers rely on Crown Prosecutors of the Public Prosecution Service of Canada to prosecute alleged offences when :

- the alleged offence has resulted in adverse environmental effects;
- a CEAA 2012 enforcement officer has been obstructed or hindered from exercising their powers or performing their duties and functions under the Act;
- an alleged offender knowingly makes a false or misleading statement or knowingly provides false or misleading information to a person exercising their powers or performing their duties and functions under the Act; or
- an alleged offender fails to comply with a section 94 order.

Bearing in mind the circumstances of an alleged offence, the alleged offender's compliance history and current conduct, the Agency may use written warnings, section 90 orders, directions or prohibitions, and section 94 orders as the first choice to restore a proponent's compliance.

Prosecution may nonetheless be necessary in the case of an alleged offence of CEAA 2012. If a prosecution is successful, the CEAA 2012 enforcement officer provides support to a Crown Prosecutor when seeking a court order. A court order may be sought to accomplish various ends such as compelling the convicted offender to adjust their practices in relation to the designated project to avoid or reduce environmental harm in the future.

As an alternative to prosecution, a Crown prosecutor may negotiate and put in place an alternative measures agreement with the alleged offender. The offender must meet eligibility requirements that are found in section 717 of the *Criminal Code*. Factors and circumstances that can influence a Crown prosecutor's decision of whether to use alternative measures are contained in Part 3.8 of the *Public Prosecution of Canada Deskbook*. Compliance with an alternative measures agreement brings an alleged offender into compliance and avoids the formal court prosecution process.

Penalties upon Conviction

If prosecution of an alleged offence of CEAA 2012 leads to an accused's pleading guilty or being found guilty at the conclusion of their trial, fines are the only penalty provided for in CEAA 2012.

The fines under CEAA 2012 are as follows:

- Under subsection 99(1), for having caused adverse environmental effects in contravention of section 6—a fine of up to \$200,000 for a first offence and a fine of up to \$400,000 for any subsequent offence. Every day that an alleged offence continues constitutes a separate contravention. Hence, each day can be prosecuted and fined as such.
- Under subsection 99(2), for failing to comply with a section 94 order—a fine of up to \$200,000 for a first offence and a fine of up to \$400,000 for any subsequent offence. Every day that an alleged offence continues constitutes a separate contravention. Hence, each day can be prosecuted and fined as such.
- Under subsection 99(3), for having obstructed or hindered a CEAA 2012 enforcement officer from exercising their powers or performing their duties and functions under the Act—a fine of up to \$100,000 for a first offence and a fine of up to \$300,000 for any subsequent offence.
- Under section 100, for having knowingly made a false or misleading statement or knowingly provided false or misleading information to a person their powers or performing their duties and functions under the Act—a fine of up to \$300,000.

How the Agency Provides for Fair Procedures of Enforcement Actions

The Agency conducts its enforcement actions in accordance with the principles of procedural fairness, as long as an enforcement action is not in response to an emergency. Specifically the Agency:

- informs the alleged offender of the main points of any allegations or grounds for an enforcement action; and
- provides the alleged offender with a reasonable opportunity to respond to the allegations and put forward their views.

The opportunity to respond to an enforcement action includes an opportunity to be heard by the enforcement officer, and a review by a review officer of orders under section 94, should one be requested.

What Enforcement Information the Agency Discloses to the Public

The Agency makes public information related to its inspection activities and enforcement actions in order to promote accessibility and accountability. Public access to information also allows the Agency to:

- foster and increase public awareness of CEAA 2012 requirements;
- promote compliance with CEAA 2012 by offering education and training opportunities, doing outreach, providing information;
- respect access to information and privacy rights; and
- ensure consistency in communication of information.

The Agency makes public the following information on its website while respecting the principles underlying the *Access to Information* and *Privacy Acts*:

- Annual summary of inspection activities conducted by enforcement officers during a given fiscal year.
- Information submitted to the Agency from proponents that is required as conditions in decision statements (e.g. implementation schedules, annual reports, plans and notices).
- Written warnings issued and any documentation received from proponents in response to written warnings.
- Section 94 orders issued and any documentation received from proponents in response to section 94 orders.
- Applications, by the Minister of the Environment, for an injunction under section 96 and the result of those requests (whether the injunction is granted or refused by the court), including any conditions imposed on the person in or by the injunction.
- Charges laid in a prosecution and the result (whether there is a plea of guilty, a conviction or a finding of not guilty), and, in the case of a plea of guilty or a conviction, the amount of any fine and the subject matter of any court order imposed on the convicted offender.

The Agency includes the name of the proponent and the related designated project in the information posted on its website.

Information regarding enforcement actions is made publicly available after the conclusion of the processes described in the [*Policy for Ensuring a Fair and Transparent Process when Enforcement Actions are taken under the Canadian Environmental Assessment Act, 2012.*](#)

How the Public Can Ask Questions, Submit a Complaint or Report an Suspected Contravention

For any inquiries related to compliance and enforcement, or to report a suspected contravention of CEEA 2012, please contact the Agency by email at compliance.confirmite@ceaa-acee.gc.ca.