



# **Policy for Ensuring a Fair and Transparent Process when Enforcement Actions are taken 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 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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**Table of Contents**

Purpose..... 1

Application..... 1

Opportunity to be heard by a CEAA 2012 enforcement officer ..... 1

    Written Warning..... 2

    Orders, prohibitions or directions under section 90 of CEAA 2012..... 2

    Orders under section 94 of CEAA 2012 ..... 3

    Emergency orders under section 94 of CEAA 2012 ..... 3

Review by the Review Officer..... 3

    Request for a review..... 4

    Initiation and conduct of a review ..... 4

    Status of enforcement action during the review ..... 5

    Decision..... 5

## **Purpose**

This policy sets out the Canadian Environmental Assessment Agency's (the Agency) approach to implement the principles of procedural fairness when an enforcement action is taken in response to an alleged or potential contravention of the *Canadian Environmental Assessment Act, 2012* (CEAA 2012).

## **Application**

This policy establishes a process for the Agency to apply when enforcement actions are taken in order to meet procedural fairness requirements. The duty to act fairly requires that a decision which affects the rights, privileges or interests of a person be made following fair procedure. This includes a reasonable opportunity to be heard to influence the decision and to assist the decision maker in making a rational and informed decision. At a minimum, the person should be told the case to be met and be given an opportunity to respond. The flexible nature of the duty of fairness recognizes that meaningful participation can occur in different ways in different situations.

The processes available to meet procedural fairness requirements when enforcement actions are taken as a result of an alleged or potential contravention of CEAA 2012 include the following:

- 1) an opportunity to be heard by a CEAA 2012 enforcement officer; and
- 2) a review by a review officer.

An opportunity to be heard by the CEAA 2012 enforcement officer is available in response to the issuance of written warnings, orders, prohibitions or directions under section 90 issued to prevent non-compliance and orders under section 94 of CEAA 2012.

A review by a review officer is available in response to the issuance of an order under section 94 of CEAA 2012 following the opportunity to be heard by the enforcement officer.

Information regarding enforcement actions is made publicly available after the conclusion of the processes, as described in this policy.

## **Opportunity to be heard by a CEAA 2012 enforcement officer**

CEAA 2012 enforcement officers are responsible for enforcing CEAA 2012 requirements. They are "designated persons" under section 89 of CEAA 2012 and have legislated powers to conduct inspections and issue enforcement actions.

When issuing an enforcement action, the CEAA 2012 enforcement officer provides the person affected by this action with an opportunity to be heard. This opportunity is offered to allow for the consideration of additional information that may not have been available when the CEAA

2012 enforcement officer issued the enforcement action, including information related to the alleged non-compliance and the supporting facts and evidence.

The approach to be taken for providing the opportunity to be heard varies depending on the enforcement action.

### **Written Warning**

When issuing a written warning, the CEAA 2012 enforcement officer must make the recipient(s) of the warning aware of the opportunity to be heard. A statement is included in the written warning informing the recipient of the manner in which additional information or comments may be submitted for consideration by the CEAA 2012 enforcement officer. The recipient of a written warning has 10 business days following the issuance of the written warning to provide comments.

After careful consideration of any comments received, the CEAA 2012 enforcement officer may confirm, amend or revoke the written warning. The decision must be provided in writing to the person(s) subject to the warning.

### **Orders, prohibitions or directions under section 90 of CEAA 2012**

When verbally issuing an order, prohibition or direction under section 90 of CEAA 2012 to prevent non-compliance, the CEAA 2012 enforcement officer must follow up in writing with that same direction, order or prohibition. The written version of the enforcement action must inform the person(s) subject to the enforcement action of the opportunity to be heard with respect to the enforcement action. A statement is included in the written version of the enforcement action informing the recipient of the manner in which additional information or comments may be submitted for consideration by the CEAA 2012 enforcement officer. The recipient has 10 business days following the issuance of the written version of the enforcement action to provide comments.

The person(s) in receipt of the enforcement action must immediately comply with the enforcement action. A request for an opportunity to be heard does not suspend the enforcement action.

After careful consideration of the information received during the opportunity to be heard, the CEAA 2012 enforcement officer may decide to confirm, amend or revoke the enforcement action. The CEAA 2012 enforcement officer must provide a copy of that decision to the person(s) to whom the enforcement action was issued. If the enforcement action is amended or confirmed, the CEAA 2012 enforcement officer must include, along with the decision, a copy of the enforcement action.

## **Orders under section 94 of CEAA 2012**

The opportunity to be heard by a CEAA 2012 enforcement officer for an order under section 94 of CEAA 2012 is provided through a notice of intent that is sent prior to issuing an order. The notice of intent informs the alleged offender(s) of a pending order, the date on which the order will be issued and includes a draft of the order. A statement is included in the notice informing the recipient of the manner in which additional information or comments may be submitted for consideration by the CEAA 2012 enforcement officer. The recipient has 10 business days following the issuance of the notice to provide comments.

After careful consideration of the information received during the opportunity to be heard, the CEAA 2012 enforcement officer may decide not to issue the order, issue the order as intended, or issue the order with amendments.

If the CEAA 2012 enforcement officer decides to issue an order, the written order must inform the person(s) subject to the order of their right to request a review by the review officer within 30 days following the issuance of the order, or within any longer period that the review officer allows.

## **Emergency orders under section 94 of CEAA 2012**

In the case of an emergency, where the CEAA 2012 enforcement officer believes on reasonable grounds that there are urgent circumstances, a notice of intent will not be issued and an order will be issued immediately that takes effect at the time of issuance. Urgent circumstances include an imminent risk to the environment, or when an adverse environmental effect has occurred. The order must inform the person(s) subject to the order of the opportunity to be heard. A statement is included in the order informing the recipient of the manner in which additional information or comments may be submitted for consideration by the CEAA 2012 enforcement officer. The recipient of an order has 10 business days following the issuance of the order to provide comments. A request for an opportunity to be heard does not suspend the order.

After careful consideration of the information received during the opportunity to be heard, the CEAA 2012 enforcement officer may decide to confirm, amend or revoke the order. The CEAA 2012 enforcement officer must provide a copy of that decision to the person(s) to whom the order was issued. If the CEAA 2012 enforcement officer decides to uphold or amend the order, the enforcement officer must also provide a copy of the order and inform the recipient(s) of the right to request a review by the review officer within 30 days following the issuance of the decision, or within any longer period that the review officer allows.

## **Review by the Review Officer**

A person to whom an order under section 94 of CEAA 2012 is issued may, following the opportunity to be heard by the CEAA 2012 enforcement officer, request a review of the order by the review officer including the alleged non-compliance and the supporting facts and evidence.

To be a review officer, an individual must demonstrate that they:

- have no involvement in inspection or investigation activities
- have no role in decision making related to the issuance of enforcement actions;
- do not work in the Compliance Promotion and Enforcement Unit of the Agency; and
- have the required specialized knowledge needed to undertake a review.

### **Request for a review**

A request for a review by the review officer must be made within 30 days following the issuance of an order under section 94 of CEAA 2012, or within a longer period that the review officer allows. In cases when the order is issued under urgent circumstances, the 30 day period begins after the opportunity to be heard by the CEAA 2012 enforcement officer. The request for a review must be made in writing and include all relevant information to enable a review officer to commence the review, including whether the applicant is asking for suspension of the order during the conduct of the review.

In cases where a suspension of the order is sought, the applicant must include information about the grounds on which it is sought, and any harm that will be suffered by the applicant if a suspension is not granted.

The written request must be sent to the review officer and a copy to the CEAA 2012 enforcement officer who issued the enforcement action (details will be included in the order).

### **Initiation and conduct of a review**

The review officer must initiate a review on receipt of a request made by a person who is subject to an order under section 94 of CEAA 2012.

As soon as practicable after receiving a request for a review, the review officer must notify the CEAA 2012 enforcement officer, all persons who are subject to the order and at the discretion of the review officer, any other person that has relevant information or expertise, that a review has been initiated.

The review officer cannot delegate the conduct of a review, but may request that other employees within the Agency provide support in the conduct of a review. In such cases, the review officer must ensure that other employees do not work in the Compliance Promotion and Enforcement Unit and have not had any involvement in decision making related to the issuance of the order under review.



The review officer may conduct the review by written submissions, or by any other method that will enable the determination of the matter in a fair and timely manner; however, the review must be documented in writing.

### **Status of enforcement action during the review**

The initiation of a review by the review officer does not suspend an order under section 94 of CEAA 2012.

The review officer may, upon request, suspend the order until the completion of the review, if the review officer considers it appropriate in the circumstances. In that case, the review officer may impose on all the persons subject to the order terms that are reasonable in the circumstances and consistent with CEAA 2012 purposes with respect to the protection of the environment. The CEAA 2012 enforcement officer will then implement the decision made by the review officer.

Before making a decision on the request to suspend an order, the review officer must provide the CEAA 2012 enforcement officer and at the discretion of the review officer, any other person, with an opportunity to make comments regarding this request.

### **Decision**

After careful review of the order under section 94 and consideration of all relevant information, the review officer decides whether the order should be confirmed, amended or revoked.

Within 10 days after the decision is made, the review officer must give notice of the decision by providing a copy of the decision to the CEAA 2012 enforcement officer, all persons who are subject to the order and any other person who participated in the review. The decision must be sent through a means that provides a record of delivery and receipt.

Within 5 days after the receipt of the review officer's decision, the CEAA 2012 enforcement officer must implement the decision made by the review officer.