



Seeking an Amendment to an Environmental Assessment Certificate

Guidance for Certificate Holders

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TABLE OF CONTENTS

Introduction	3
Purpose	3
Background	3
Fees	3
OVERVIEW.....	5
Step 1 – Pre-Application	5
Step 2 – Application Submitted	6
Step 3 – review of Application	7
SIMPLE AMENDMENTS (INCLUDING NAME CHANGES AND TRANSFERS OF CERTIFICATES):	7
TYPICAL AMENDMENTS:	7
COMPLEX AMENDMENTS:	8
Step 4 – Assessment of the Application	8
Step 5 – Decision.....	8
CONTACT INFORMATION.....	11

INTRODUCTION

PURPOSE

This document outlines the Environmental Assessment Office's (EAO) general approach for considering requests for amendments to Environmental Assessment Certificates (EAC).

BACKGROUND

An EAC specifies how a project must be constructed, operated and, as relevant, decommissioned, and may also include socio economic conditions.

Under Section 19 of the *British Columbia Environmental Assessment Act* (the Act)¹, the holder of an EAC may apply to the Executive Director of EAO for an amendment. An application for amendment is necessary when a Certificate Holder proposes to change their legal name, ownership of the project or any aspect of the certificate, (e.g. design, location, construction, operation or decommissioning of the project). Timelines for the completion of the process depend on the complexity of an application for certificate amendment (see Table 1).

Statutory Authority

Under Section 19(1) of the *Environmental Assessment Act*, a holder of an Environmental Assessment Certificate may apply in writing to the Executive Director to amend the certificate, stating the holder's reasons, and must pay any prescribed fee in the prescribed manner.

FEES

The Environmental Assessment Fee Regulation² recognizes that amendments vary in complexity. The general fee structure is:

- › a fee of \$2,000 for Simple Amendments;
- › a \$10,000 fee for Typical Amendments; and,
- › a \$50,000 fee for Complex Amendments.

The Certificate Holder is required to pay the fee once the complexity of the amendment application has been assessed by EAO and a fee order has been issued. See table 1 below for the criteria for determining the complexity of an amendment application.

For more information on fees and how to pay, see the fees overview³ page on EAO's website.

¹ A copy of the Environmental Assessment Act is available on the BC Laws website at:

http://www.bclaws.ca/civix/document/id/complete/statreg/02043_01

² A copy of the Environmental Assessment Fee Regulation is available on the BC Laws website at:

http://www.bclaws.ca/civix/document/id/complete/statreg/50_2014

Table 1 – criteria for determining the complexity of aN Amendment application⁴

Class	Characteristics	Average Review Time ⁵
Simple	<ul style="list-style-type: none"> › No physical change to the project › Is administrative in nature (e.g. name change or change of certificate holder as a result of certificate being transferred to a new entity) › Is technical in nature (e.g. update condition to align with new standard condition language, to align with regulatory changes, or to clarify ambiguous wording in schedule A or B). › Should be a clear rationale why the change is minimal compared to a typical amendment › Low potential to impact asserted or established Aboriginal rights, including title, and treaty rights 	<ul style="list-style-type: none"> › Less than 3 months
Typical	<ul style="list-style-type: none"> › A material but limited change to the project › Proposed change has some potential to affect asserted or proven Aboriginal rights or treaty rights › EAO reconvenes an advisory working group to review potential for significant adverse effects based on the proposed change(s) › EAO may require public consultation 	<ul style="list-style-type: none"> › Between 3 and 6 months
Complex	<ul style="list-style-type: none"> › Material change to the location of project component(s) › Material change to the processes and outputs of a facility with potential for significant adverse effects (e.g. request to incorporate change of technology with limited operational testing data in British Columbia or North America) › Costs to government in reviewing the request will be significantly more than \$10,000 (fees for typical amendment) › Complex consultation requirements are expected, based on the experience from the original assessment, and any changes that have occurred in the intervening time period › Proposed change(s) have potential to adversely affect asserted or proven Aboriginal rights or treaty rights 	<ul style="list-style-type: none"> › 6 months or longer

³ The fees overview page is available on the EAO's website at: <http://www.eao.gov.bc.ca/fees.html>

⁴ To meet the definition of a simple, typical or complex amendment, one or more characteristics in Table 1 will apply.

⁵ Once application is accepted. Timeline assumes Certificate Holder is able to respond to additional information requests within a timely manner.

OVERVIEW

STEP 1 – PRE-APPLICATION

The amendment process (see Figure 1) typically begins when the Certificate Holder contacts EAO about their interest in changing the ownership, design, location, construction, operation or decommissioning of a project in a manner inconsistent with a certificate condition or the Certified Project Description and to learn what changes to their certificate may be required to allow them to do so. Certificate Holders should contact the [the Executive Project Director for their sector](#)⁶ to discuss next steps.

Certificate Holders are encouraged to contact EAO as early as possible, particularly when the proposed change has been identified as part of a subsequent permitting or authorization process. In those circumstances it may be possible to develop a concurrent review process to avoid duplication of effort and minimize delays.

Following a discussion of the amendment process, an EAO Project Lead will be assigned by the Executive Project Director to be the Certificate Holder's principal point of contact for the amendment.

Is an Amendment Required?

In the course of discussions with the Certificate Holder, the Project Lead will consider if the changes being proposed are within the scope of the existing EAC conditions and certified project description. Through this review, the Project Lead will confirm as to whether an amendment is required. Note that some older certificates allow for non-material changes to be made to certificates, outside of the formal amendment process.

⁶ For contact information see the list of executive project directors on the EAO's contacts webpage available at:
http://www.eao.gov.bc.ca/contact_us.html

Information Requirements for the Amendment

EAO will advise the Certificate Holder of the information an amendment application must contain. Some Simple amendments, like name changes and transfers of certificates, have very limited information requirements. However, where physical changes or other changes that have the potential to affect the conclusions of the original environmental assessment are being contemplated, EAO will require information to enable it to assess the potential adverse effects (including effects on established and asserted Aboriginal interests and treaty rights) of the proposed changes. If the impact of the proposed changes is significant enough to have the potential to change the conclusions of the original assessment, the amendment may not be allowed. EAO may form a Working Group composed of government agencies and Aboriginal groups to assist them in determining the information that will be required.

Once the information requirements are established, EAO will notify the Certificate Holder of the requirements in writing. Certificate Holders are advised to gather the required information in as comprehensive a manner as possible, undertaking any field studies or technical analyses, or public and Aboriginal consultations necessary, before submitting their application. For all types of amendments, EAO strongly encourages Certificate Holders to work with government agencies and Aboriginal groups to resolve any potential issues of concern *prior* to submitting their application.

STEP 2 – APPLICATION SUBMITTED

Once all required information has been gathered, the Certificate Holder can prepare and submit their application. The application should clearly state the change being requested and include all supporting documentation required by EAO.

Examples of Information Requirements

Simple (e.g. transfer of certificate):

- › Project name & Environmental Assessment Certificate number.
- › Specific certificate conditions that are impacted
- › Rationale for amendment
- › If corporate restructuring, information on corporate ownership/structure
- › Copy of Incorporation Certificate from the Registrar of Companies Office to show that the prospective EAC holder (purchaser) is in good standing
- › Conclusions illustrating why no possibility of a significant adverse effect, why public interest is unlikely to be affected and why consultation requirement is at the “notification” level

Typical:

- › Project name & Environmental Assessment Certificate number.
- › Specific certificate conditions that are impacted
- › Description of project change
- › Analysis of valued components that may be impacted and the proposed mitigation measures
- › A summary of related public consultation undertaken and the feedback received
- › A summary of related Aboriginal consultation undertaken and the feedback received to date

Complex:

- › Project name & Environmental Assessment Certificate number
- › Specific certificate conditions that are impacted
- › Comprehensive description of project change
- › Analysis of valued components that may be impacted and proposed mitigation measures
- › A summary of related public consultation undertaken and the feedback received
- › A summary of Aboriginal consultation undertaken and the feedback received
- › Additional Information requirements

Upon receipt, EAO will review the application for completeness. If the application does not provide all the required information, EAO may return the application to the Certificate Holder or request that the missing information be provided. To avoid delays, including repeated returns of the application, the Certificate Holder is advised to ensure their application is as complete as possible.

Once the application is accepted by EAO, the application will be posted to EAO's Project Information Centre website⁷. EAO will decide if the amendment is Simple, Typical or Complex (see table 1 above) as required by the Environmental Assessment Fee Regulation. The determination is based on:

- › The nature of the amendment:
 - is the change purely administrative in nature?
 - are changes being proposed that may have the potential to change the conclusions of the Application?
- › The degree and nature of Working Group involvement required to assess the proposed change; and,
- › The complexity of the Crown's Aboriginal consultation obligations, and expectations for public consultation, taking into account consultation efforts undertaken by the certificate holder prior to making the amendment request.

Once EAO makes a determination on the complexity of the amendment they will invoice the Certificate Holder for the appropriate fee⁸. Review of the application commences once the Certificate Holder has paid the required fee.

STEP 3 – REVIEW OF APPLICATION

While EAO tailors the review procedures to meet the specific circumstances of the application, the general process is as follows:

SIMPLE AMENDMENTS (INCLUDING NAME CHANGES AND TRANSFERS OF CERTIFICATES):

- › No public consultation is required;
- › Members of the Working Group are engaged only if facts related to the amendment need to be clarified; and
- › Aboriginal groups are consulted through notification letters and have the opportunity to raise issues for discussion.

TYPICAL AMENDMENTS:

⁷ The project information center website is available at: http://a100.gov.bc.ca/appsdata/epic/html/deploy/epic_home.html

⁸ For more information see the BC Environmental Assessment Fee Guideline available at:
http://www.eao.gov.bc.ca/files/fees/EAO_Fees_Guidelines.pdf

- › Public consultation may be required;
- › Review and comment is requested from Working Group members on the application; or,
- › Aboriginal and/or Public consultation is required (through the Working Group process or other consultation activities).

EAO has considerable flexibility about the structure and design of the application review process. At its discretion, EAO may require that a Certificate Holder take an active role in public and Aboriginal consultation and in working with Working Group members to resolve outstanding issues. This approach is common for typical amendments.

COMPLEX AMENDMENTS:

- › Process similar to the standard environmental assessment required for an environmental assessment certificate and will likely include a public consultation period;
- › Formal Working Group comment period is required, including possible meetings, sub-committees and discussions; or,
- › Aboriginal and/or Public consultation is required (through Working Group process and/or other consultation activities).

Certificate holders will be required to take an active role in Aboriginal and/or Public consultation and in resolving issues raised by the Working Group.

STEP 4 – ASSESSMENT OF THE APPLICATION

EAO staff will prepare a report titled “Assessment of an Application for the Certificate Amendment.” If approval of the amendment is being recommended, staff will also draft an amended certificate including any revised certificate conditions and/or new certified project description (if the certificate has a certified project description) and provide the documentation to the appropriate EAO decision maker. For any type of amendment other than a Simple Amendment, EAO will share a penultimate draft of its report with the Certificate Holder, and relevant Working Group members, including Aboriginal groups.

STEP 5 – DECISION

EAO will inform the Certificate Holder once a decision has been made to:

- › Amend the environmental assessment certificate; or
- › Refuse to amend the certificate.

If the amendment request is approved, EAO will provide the Certificate Holder with a copy of the amended certificate.

EAO will also notify the Working Group and Aboriginal groups of the decision to amend or refuse to amend the certificate.

The amended certificate and the “Assessment of an Application for Certificate Amendment” will be posted to the EAO’s project information center website.

Figure 1 – Amendment Process Summary**Step 1 – Pre-Application**

- › Certificate Holder contacts EAO with respect to their interest in amending their EA certificate to accommodate a name change, a change in ownership of the project, or any change in a certificate condition or certified project description.
- › EAO describes the process in general terms, and assigns a Project Lead to the amendment.
- › EAO confirms whether an amendment is required and advises the Certificate Holder of additional information required.
- › Certificate Holder gathers the required information, undertaking any studies or public or Aboriginal consultation that is required.

**Step 2 – Application Submitted**

- › Certificate Holder submits an amendment application that includes a description of the change being requested and all the required information.
- › EAO reviews the application.
- › If the application does not contain all required information, EAO will return it to the Certificate Holder.
- › If the application is complete, EAO will determine whether the application is for a Simple, Typical or Complex amendment and levies the appropriate fee (as per the Environmental Assessment Fee Regulation).
- › The Certificate Holder pays the required fee.
- › EAO commences the application review.

**Step 3 – Review of Application****Simple**

- › EAO consults Aboriginal groups
- › EAO may notify relevant working group members of the amendment application

Typical

- › EAO consults Aboriginal groups and relevant working group members
- › EAO may require public consultation

Complex

- › EAO consults Aboriginal groups
- › EAO typically holds formal Working Group meetings and comment periods
- › EAO conducts public consultation period

**Step 4 – Assessment of Application**

- › The Project Lead completes the assessment of the application.
- › The Project Lead produces EAO's Assessment of the Application for a Certificate Amendment report and, as appropriate, shares with the Certificate Holder and working group members in draft form.
- › Once finalized, the Project lead provides EAO's report or other decision support materials to EAO's Executive Director (or delegated decision maker).

**Step 5 – Decision**

- › EAO's Executive Director (or delegated decision maker) makes decision and informs the Certificate Holder.
- › EAO staff informs the Working Group, including Aboriginal groups, and posts the amended certificate and EAO's report and related materials on EAO's website.

CONTACT INFORMATION

If you are a Certificate Holder contemplating an amendment of your certificate and want to contact the appropriate **Executive Project Director for your sector**, please consult:

http://www.eao.gov.bc.ca/contact_us.html