

**Notice of Issuance of an
Order
Pursuant to section 94 of the
*Canadian Environmental Assessment Act, 2012***

January 6, 2017

File #: CEAA Registry - 63919

PURPOSE OF THE NOTICE

The purpose of this Notice is to notify BC Hydro (the proponent), to whom the Order is directed, that the undersigned Enforcement Officer designated under section 89 of the *Canadian Environmental Assessment Act, 2012*, (CEAA 2012) has issued an Order.

AUTHORITY

The authority for me to issue an Order is found in subsection 94(1) of CEAA 2012. This document constitutes an Order issued to the proponent of the Site C Clean Energy Project, pursuant to section 94 of CEAA 2012.

NAME OF PERSON(S) TO WHOM THIS ORDER IS DIRECTED

This Order is directed to the following:

BC Hydro
333 Dunsmuir St.
Vancouver, B.C.
V6B 5R3

c/o

Mr. Greg Scarborough
Manager, Site C Environmental Compliance, Mitigation and Monitoring
BC Hydro
1055 Dunsmuir Street
Vancouver, BC
V7X 1V5

ORDER

After conducting an inspection, the undersigned has reasonable grounds to believe that the following provisions of CEAA 2012 have allegedly been violated:

Failure of the proponent to comply with condition 8.7 which states:

“The Proponent shall implement the plan and provide to the Agency an analysis and summary of the implementation of the plan, as well as any amendments made to the plan in response to the results, on an annual basis during construction and for the first ten years of operation and once every five years for the next 20 years.”

Relevant details of the Fish and Fish Habitat Protection Plans and the associated Erosion Control plans are included in Annex I.

By failing to comply with a condition of the decision statement issued by the Minister of the Environment and Climate Change for the Site C Clean Energy Project, BC Hydro has allegedly contravened paragraph 6(b) of CEAA 2012. In so doing, BC Hydro has allegedly committed an offence contrary to subsection 99(1) of CEAA 2012, punishable on summary conviction and liable, for a first offence, to a fine of not more than \$200,000 and, for any subsequent offence, to a fine of not more than \$400,000. Furthermore, subsection 99(4) of CEAA 2012 states that if an offence under subsection 99(1) of CEAA 2012 is committed or continues on more than one day, it constitutes a separate offence for each day on which it is committed or continued.

REASONABLE GROUNDS

I, Nicolas Courville, Senior Enforcement Officer, employed by the Compliance Promotion and Enforcement Unit of the Canadian Environmental Assessment Agency (Agency) and designated under section 89 of CEAA 2012 and, have reasonable grounds to believe that these are the relevant facts surrounding the alleged contravention(s).

FACTS

A site inspection of the Site C Clean Energy Project was conducted between November 29, 2016 and December 2, 2016 by Enforcement Officer Nicolas Courville and Senior Compliance and Enforcement Analyst Carl Johansson. During the inspection three distinct work sites listed below were inspected.

- the Moberly River Construction Bridge;
- the Right Bank Drainage Tunnel; and
- the Right Bank Cofferdam.

Each site is subject to its own specific Environmental Protection Plan (EPP).

In the course of the inspection, it was observed that there were no erosion and sediment contingency supplies located within the laydown or work areas of these three sites as required in each of the sites' respective EPPs.

When questioned, a representative of BC Hydro directed the enforcement officers to the 5km marker laydown area, where central contingency supplies had been placed for all work areas on the right bank of the Peace River. After inspecting this central contingency stockpile and conducting an inventory of the individual components in the stockpile, it was determined that the content of the contingency stockpile did not contain sufficient supplies to meet the requirements for one individual site, and therefore could not contain the aggregate requirements of all three work areas.

MEASURES TO BE TAKEN

Under the authority given to me pursuant to paragraph 94(1) (b) of CEAA 2012, BC Hydro is hereby ordered to take the following measures:

1. Take the necessary steps to:
 - a. ensure erosion and sediment control contingency supplies are stored at the laydown areas in accordance with the respective EPPs, specifically at the;
 - i. Moberly Bridge Construction Bridge;
 - ii. Right Bank Drainage Tunnel; and,
 - iii. Right Bank Cofferdam.
 - b. Provide a written confirmation and photographic evidence that the required contingency supplies are in place within 30 days from the issuance of this Order.

EFFECTIVE DATE OF THE ORDER

This Order takes effect immediately on January 6, 2017 at the time of delivery.

COMPLIANCE WITH THIS ORDER IS MANDATORY

Failure to comply with an Order issued under section 94 of CEAA 2012 is an offence under subsection 99(2) of CEAA 2012. The penalty for a first offence is a fine of not more than \$200,000, and the penalty for any subsequent offence is a fine of not more than \$400,000. If the offence of failure to comply with this Order continues on more than one day, each day that the proponent fails to comply with the Order constitutes a separate offence (subsection 99(4) of CEAA 2012). A court may apply a penalty for each day that the non-compliance with the Order continues.

REVIEW OF THE ORDER

Within 30 days from the date of your receipt of the Order, BC Hydro may request, in writing, a review of the Order by an Agency Official.

BC Hydro may address its request to:
CEAA Review Officer
Place Bell Canada, 22nd Floor
160 Elgin Street
Ottawa, Ontario
K1A 0H3

A request for a review does not suspend the operation of the Order and compliance is mandatory. Should BC Hydro want the Order to be suspended while it is being reviewed, that demand must be included in its request. If BC Hydro is not satisfied with the outcome of the review, BC Hydro can apply for a judicial review of the Order by the Federal Court of Canada (Trial Division).

Should BC Hydro not wish to seek review of the Order with the Agency, BC Hydro may directly apply for a judicial review of the Order by the Federal Court of Canada (Trial Division).

Should a person seek judicial review of the Order by the Federal Court of Canada (Trial Division), the Order is not automatically suspended. The person must specifically make that request to the Court.

DATE OF ISSUANCE

This Order is issued on January 6, 2017 by Senior Enforcement Officer Nicolas Courville.

Nicolas Courville
Senior Enforcement Officer
Compliance promotion and Enforcement Unit
Canadian Environmental Assessment Agency

Please note that in accordance with the Compliance and Enforcement Policy for the *Canadian Environmental Assessment Act, 2012* and the Canadian Environmental Assessment Agency's policy on transparency, this Order will be posted on the Agency's Compliance Promotion and Enforcement website.

ANNEX I – DETAILS OF CONDITION 8.7

Fisheries and Aquatic Habitat Management Plan Site C Clean Energy Project

Revision 1. June 1

*“These conditions are addressed in **CEMP** Section 4.5, Fisheries and Aquatic Habitat Management.”*

Construction Environmental Management Plan (CEMP)

Revision 4. 2016-07-26

4.5 Fisheries and Aquatic Habitat Management

EPPs will address, at a minimum, the following requirements if applicable:

Sediment Controls

Install effective sediment and erosion control measures and conduct construction activities in a manner which reduces the potential for siltation into watercourses in accordance with Section

4.4 of this CEMP.

4.4 Erosion Prevention and Sediment Control Management

- Sediment and erosion control measures shall be:
 - Sediment and erosion control contingency supplies must be onsite, readily accessible, clearly identifiable, and of sufficient quantity to respond to an event. EPPs must indicate and describe the minimum supply of contingency supplies to be kept onsite, relevant to the work.

Right Bank Drainage Tunnel Environmental Protection Plan (EPP)

Revision 5. 2016-07-13

6.2 EROSION PREVENTION AND SEDIMENT CONTROL MANAGEMENT

A contingency supply of erosion control materials will be kept on hand in the work area, comprised of the following:

- 500 lineal metres of silt fencing with stakes;
- 10 m³ of crushed gravel;
- 20 pre-filled sand bags.

Contingency materials will be stored at the tunnel facilities area.

ANNEX I – DETAILS OF CONDITION 8.7

Right Bank Cofferdam Environmental Protection Plan (EPP)

Revision 4. 2016-10-03

6.2 EROSION PREVENTION AND SEDIMENT CONTROL MANAGEMENT

A contingency supply of water management and erosion control materials will be kept on hand at the Right Bank Cofferdam laydown area, comprised of the following:

- 300 lineal metres of silt fence with stakes;
- 100 sandbags;
- 50 certified weed-free straw bales; and
- 3 m³ of crushed gravel.

Moberly River Construction Bridge Environmental Protection Plan

Revision 6. 2016-09-29

6.5.4.3 ESC Contingency Supplies

The following minimum supplies will be readily available as contingency at the laydown location. Due to the persistent inclement weather conditions occurring throughout the region the amount of contingency supplies has been doubled from the suggested standards.

- Silt fence (20 Rolls)
- Flagging tape (Two Brick)
- Sandbags (200 Empty Bags)
- Sheet poly (4 Rolls)
- Geotextile (2 Roll)
- Straw Bales (Weed-free)
- Clean gravel crush