

## Notice of Non-Compliance

December 7, 2022

**File #:** IAA Registry - 63919

British Columbia Hydro and Power Authority  
c/o Mr. Greg Scarborough  
Manager, Site C Environmental Compliance, Mitigation and Monitoring  
333 Dunsmuir St, 13th floor  
Vancouver, BC V6B 5R3

**BY E-MAIL, FOLLOWED BY A HARD COPY SENT BY REGISTERED MAIL WITH  
ACKNOWLEDGEMENT OF RECEIPT**

**RE: Alleged Non-Compliance by British Columbia Hydro and Power Authority  
with the Decision Statement issued for the Site C Clean Energy Project**

Mr. Scarborough:

I, Nicolas Courville, am designated as an enforcement officer under the *Impact Assessment Act* (the IAA).

The Minister of Environment issued a decision statement (the Decision Statement) for the Site C Clean Energy Project (the Project) under section 54 of the *Canadian Environmental Assessment Act, 2012* (CEAA 2012), on November 25, 2014. The proponent of the Project is the British Columbia Hydro and Power Authority. As per section 184 of the IAA, the Decision Statement is now deemed to be a decision statement issued under the IAA and is subject to the provisions within it.

### **FACTS**

From October 12, 2022, to October 13, 2022, I conducted an on-site inspection at the location of British Columbia Hydro and Power Authority's designated project, Site C Clean Energy, located southwest of Fort St. John, British Columbia. As a result of the inspection, I determined the alleged facts set out below.

During this inspection, I inspected against conditions of the Decision Statement including condition 2.6, which requires the proponent to implement a plan to prevent accidents and malfunctions. Section 3 of the Accidents and Malfunctions Plan (Revision 0: June 5, 2015) and section 4 of the Construction Environmental Management Plan (Revision 10.1, April 6, 2022)(the CEMP) include measures to prevent accidents and malfunctions to fulfill the requirements of condition 2.6.

I inspected multiple vehicles and equipment for the presence of spill kits and verified their content, when present. Several spill kits were either not present or did not have the minimum and appropriate content, as specified in section 4.13 of the CEMP.

I inspected multiple pickup truck cargo beds for the presence of hazardous materials and for fuel containers that are 23 litres or less. None of the pickup truck cargo beds containing these items met the requirements of sections 4.6 and 4.8 of the CEMP.

## **LAW AND POLICY**

Condition 2 of the Decision Statement sets out the following:

### **2. Accidents and malfunctions**

2.1. The Proponent shall construct and operate the Designated Project in a manner that prevents accidents and malfunctions that may result in adverse environmental effects.

2.2. The Proponent shall develop, in consultation with Environment Canada and the Agency, a plan to prevent accidents and malfunctions and outline procedures in the case of occurrence of an accident or malfunction.

2.3. The plan shall include:

2.3.1. identification of potential accidents and malfunctions associated with the Designated Project that may result in adverse environmental effects;

2.3.2. for each potential accident and malfunction identified:

2.3.2.1. measures to prevent its occurrence;

2.3.2.2. a communication plan in case of occurrence, including notifications to be provided;

2.3.2.3. measures to be implemented in case of an occurrence to minimize any adverse environmental effects; and

2.3.2.4. a reporting process on any environmental effects of the occurrence.

2.4. The Proponent shall submit to Environment Canada and the Agency a draft copy of the plan for review 90 days prior to initiating construction.

2.5. The Proponent shall submit to the Agency the final plan a minimum of 30 days prior to initiating construction.

2.6. The Proponent shall implement the plan and provide to the Agency a review and summary of the implementation of the plan as well as any updates required to the plan on an annual basis commencing with construction. In the event of an occurrence of an accident or malfunction, the Proponent shall update the plan to incorporate new procedures and measures to avoid a reoccurrence, as necessary

Section 3.2 of the Accidents and Malfunctions plan (*Revision 0: June 5, 2015*) states:

All vehicles will be equipped with an appropriately sized spill kit, and personnel operating will have applicable training.

Additional measures to reduce the likelihood of a release or spill of chemicals and hazardous material are described in the following sections of the CEMP:

- Section 4.6 Fuel Handling and Storage Management;
- Section 4.8 Hazardous Waste Management; and
- Section 4.13 Spill Prevention and Response.

The relevant sections of the CEMP are sections 4.6, 4.8 and 4.13. Excerpts from those sections are set out below. For the full text of these sections, please see the CEMP. The sections state:

#### Section 4.6 Fuel Handling and Storage Management

- Containers must be transported upright and secured to prevent shifting and toppling. Impermeable containment is required for stationary fuel storage as well as mobile fuel storage (i.e., fuel trucks) when remaining on site overnight (CCME 2003)
- Store and transport containers that are 23 litres or less in an equipment box of a vehicle that is capable of containing the total quantity of fuel in the container(s) should it leak or spill. If not stored in an equipment box store these containers

...

in impermeable containment as per the above requirements for containers greater than 23 litres

#### Section 4.8 Hazardous Waste Management of the CEMP

- Store, handle and transport hazardous materials to avoid loss and to allow containment and recovery in the event of a spill in accordance with all applicable legislation, including, but not limited to, the BC Fire Code, the National Fire Code of Canada, and the *Transportation of Dangerous Goods Act*

#### Section 4.13 Spill Prevention and Response

##### Spill Response Equipment

- The minimum required content of vehicle spill kits is:
  1. For all pickup trucks, transport vehicles and equipment with on-board fuel capacity of 500L or less: Goggles, PVC gloves, 10 absorbent pads, 2 absorbent socks (1 m or 3ft long each), 1 container of emergency sealant, 3 heavy duty plastic bags
  2. For all pickup trucks, transport vehicles and equipment with a portable fuel tank with capacity of 500L or less: Goggles, PVC gloves, 10 absorbent pads, 2 absorbent socks (1m or 3ft long each), 1 container of emergency sealant, 3 heavy duty plastic bags
  - ...
  4. *For all pickup trucks, transport vehicles and equipment with a portable fuel tank with capacity of greater than 500L: Goggles, PVC gloves, 20 absorbent pads, 6 absorbent socks (1 m or 3ft long each), 1 container of emergency sealant, 5 heavy duty plastic bags [italics added for emphasis]*

The required contents are to be carried in each vehicle inside a container marked "Spill Kit".

- Spill kit contents for fuel dispensing stations shall be consistent with requirements outlined in Table 9.3 (a) of *A Field Guide to Fuel Handling, Transportation and Storage* (MWLAP 2002). *Equipment containing ethylene*
- ...

*glycol (antifreeze) or other water soluble chemical shall carry an appropriate number of water soluble chemical absorbent pads in addition to absorbent pads used for petroleum products [italics added for emphasis]*

## CONCLUSION

I have reasonable grounds to believe that at the time of the inspection British Columbia Hydro and Power Authority was not in compliance with condition 2.6 of the Decision Statement related to this Project, which requires you to implement your plan to prevent accidents and malfunctions. Thus, I hereby issue to British Columbia Hydro and Power Authority this notice of non-compliance pursuant to subsection 126(1) of the IAA.

In so doing, British Columbia Hydro and Power Authority allegedly contravened paragraph 7(3)(b) of the IAA, therefore allegedly committing an offence contrary to paragraph 144(1)(a) and paragraph 144(1)(b) of the IAA, punishable on summary conviction and liable, for a first offence to a fine of not more than \$4,000,000 and for a second or subsequent offence, to a fine of not more than \$8,000,000. Subsection 146(1) further states if an offence of contravening section 7 or paragraph 144(1)(b) is committed or continued on more than one day, it constitutes a separate offence for each day on which it is committed or continued.

This notice of non-compliance is not a finding of guilt or civil liability, and is not an administrative action. It alleges non-compliance with the IAA. If, during a future inspection, I or another enforcement officer identifies the same non-compliance or additional non-compliance, I or the enforcement officer carrying out the inspection may take further enforcement action. I am bringing this alleged contravention to your attention in order for you to take corrective action.

If you have comments regarding this notice of non-compliance, you may submit comments to me no later than December 23, 2022. I will consider your comments and determine whether to maintain this notice of non-compliance, amend it or withdraw it. Once a decision is made, I will communicate my decision to you. If I amend this notice of non-compliance, I will send you a revised text. If I choose to maintain or withdraw the notice of non-compliance, I will send you written notice of this.

The Impact Assessment Agency of Canada will retain your comments, and the action that I take after considering your comments, in the compliance file for the Project. Should you require additional information on this matter, please contact me by e-mail at [iaac-compliance.conformite-aeic@ceaa-acee.gc.ca](mailto:iaac-compliance.conformite-aeic@ceaa-acee.gc.ca).

Please note that as required under paragraph 152(c) of the IAA, the Agency will publish this notice of non-compliance on the Agency's Compliance Promotion and Enforcement website.

<Original signed by>

Nicolas Courville  
Senior Enforcement Officer  
Compliance Promotion and Enforcement Unit  
Impact Assessment Agency of Canada