



Written Warning

Canadian Environmental Assessment Act, 2012

October 9, 2015

Agency File No.: 004387

Sent via E-mail and followed-up with registered mail

The purpose of this warning is to inform:

British Columbia Hydro and Power Authority
Site C Clean Energy Project
P.O. Box 2218
Vancouver, BC
V6B 3W2

c/o Diane McSherry
Executive Vice President
British Columbia Hydro and Power Authority
600-1055 Dunsmuir St.
Vancouver, B.C.
V7X 1V5

Danielle Melchior
Director, Environmental Assessment and Regulatory
British Columbia Hydro and Power Authority
600-1055 Dunsmuir St.
Vancouver, B.C.
V7X 1V5

Bettina Sander
Regulatory Manager
British Columbia Hydro and Power Authority
600-1055 Dunsmuir St.
Vancouver, B.C.
V7X 1V5

of the following:



ALLEGED FAILURE TO COMPLY WITH THE CONDITIONS INCLUDED IN THE DECISION STATEMENT ISSUED BY THE MINISTER OF THE ENVIRONMENT FOR THE SITE C CLEAN ENERGY PROJECT (Canadian Environmental Assessment Agency (the Agency) file no.: 004387).

In accordance with the Decision Statement issued to the British Columbia Hydro and Power Authority (hereafter BC Hydro) on November 25, 2014 in Ottawa, Ontario, by the Honourable Leona Aglukkaq Minister of the Environment, pursuant to section 54 of the *Canadian Environmental Assessment Act, 2012* (CEAA 2012), BC Hydro must comply with all conditions set out in the statement and failure by BC Hydro to fulfill these conditions is a contravention of CEAA 2012.

BC Hydro commenced construction of the Site C Clean Energy Project in summer 2015. The undersigned enforcement officer, designated under section 89 of CEAA 2012 to verify compliance or prevent non-compliance with CEAA 2012, conducted an inspection on September 22 and 23, 2015 at the Site C Clean Energy Project site located southwest of Fort St. John, BC.

The information collected during this inspection gives the undersigned enforcement officer reasonable grounds to believe that BC Hydro and the above-listed persons are in alleged non-compliance with conditions included in the Decision Statement issued by the Minister of the Environment.

ALLEGED NON-COMPLIANCE

As a result of an on-site inspection conducted on September 22 and 23, 2015, I, the undersigned enforcement officer, identified the following alleged non-compliance:

1. Condition 2. Accidents and malfunctions

Condition 2.2. requires BC Hydro to develop a plan to prevent accidents and malfunctions and to outline procedures in the case of occurrence of an accident or malfunction. The plan must include, among other requirements, measures to prevent the occurrence of potential accidents and malfunctions identified by the proponent (conditions 2.3, 2.3.1, 2.3.2 and 2.3.2.1). Condition 2.6 requires the BC Hydro to implement the plan submitted to the Agency pursuant to condition 2.5.

On June 5, 2015, BC Hydro submitted to the Agency, the required plan entitled "Accidents and Malfunctions Plan". To reduce the likelihood of an occurrence of release or spills of chemicals and hazardous material, the plan requires that all vehicles be equipped with an appropriately sized spill kit, and that personnel operating the vehicles have applicable training.

On September 23, 2015, the undersigned enforcement officer noted that four (4) Duz Cho trucks, located on the South bank side of the Site C Clean Energy Project, near the Duz Cho Main Office did not have a spill kit in or with their vehicles (trucks). The trucks are operated by the Duz Cho Contracting hired by BC Hydro to conduct work on the South Bank.



Therefore, BC Hydro is allegedly in non-compliance with condition 2.6 included in the Decision Statement, issued on November 25, 2014.

2. Condition 8. Fish and fish habitat

Condition 8.3. requires BC Hydro to develop a fish and fish habitat management plan. The plan must include, among other requirements, erosion and sediment control measures to mitigate potential effects on fish and fish habitat during construction and operation of the project (conditions 8.4, 8.4.2, 8.4.2.1). Condition 8.7. requires BC Hydro to implement the plan submitted by the proponent to the Agency pursuant to condition 8.6.

On June 1, 2015, BC Hydro submitted to the Agency, the required plan entitled "Fisheries and Aquatic Habitat Management Plan". To meet condition 8.4.2.1, the plan refers to the construction environmental management plan which describes the erosion and sediment control measures that must be implemented by BC Hydro to mitigate potential effects on fish and fish habitat. The erosion and sediment control measures required in the construction environmental management plan include, among other mitigation measures: maintaining ground cover or using materials such as geotextiles/erosion control cloth to stabilize slopes.

On September 22 and 23, 2015, the undersigned enforcement officer observed that contractors, operating for BC Hydro, were conducting road work on the North Bank Access Road ("L3" ravine location).

The undersigned enforcement officer noted that there were signs of a watercourse that was dry at the time of the inspection at the bottom of the North Bank Access Road ("L3" ravine location).

The watercourse that was dry at the time of the inspection as noted above connects to a watercourse, near River Road, with fish habitat characteristics.

The undersigned enforcement officer noted the lack of sediment and erosion control measures to stabilize slopes and control site runoff of the North Bank Access Road ("L3" ravine location).

The undersigned enforcement officer is of the view that the lack of sediment and erosion control measures put in place to stabilize slopes and control site runoff of the North Bank Access Road ("L3" ravine location), as described in construction environmental management plan, referred in the Fisheries and Aquatic Habitat Management Plan may result in effects on fish and fish habitat in the watercourse, near River Road.

Therefore, BC Hydro is allegedly in non-compliance with the condition 8.7 included in the Decision Statement, issued on November 25, 2014.



3. Condition 8.3. requires the proponent to develop a fish and fish habitat management plan. The plan includes, among other requirements, erosion and sediment control measures to mitigate potential effects on fish and fish habitat during construction and operation of the project (conditions 8.4, 8.4.2, 8.4.2.1). Condition 8.7. requires the proponent to implement the plan submitted by BC Hydro to the Agency (condition 8.6).

On May 19, 2015, BC Hydro submitted to the Agency, the required plan entitled "Fisheries and Aquatic Habitat Management Plan". To meet condition 8.4.2.1, the plan refers to the construction environmental management plan which describes the erosion and sediment control measures that must be implemented to mitigate potential effects on fish and fish habitat by the proponent. The erosion and sediment control measures required in the construction environmental management plan include, among other mitigation measures, the installation of effective sediment and erosion control measures before starting construction to reduce the potential for introduction of sediment into watercourses in accordance with Land Development Guidelines for the Protection of Aquatic Habitat (published by the federal Department of Fisheries and Oceans in 1993) and Standards and Best Practices for Instream Works (published by the British Columbia Ministry of Environment in 2004).

On September 22 and 23, 2015, the undersigned enforcement officer noted a silt fence improperly installed across the watercourse that was dry at the time of the inspection near the North Bank Access Road ("L3" ravine location).

Given BC Hydro's reliance on the Land Development Guidelines for the Protection of Aquatic Habitat (published by the federal Department of Fisheries and Oceans in 1993) as set out in BC Hydro's plan, the undersigned enforcement officer is of the view that an improperly installed silt fence, for erosion and sediment control, may result in effects on fish and fish habitat in the identified watercourse, near River Road.

Therefore BC Hydro is allegedly in non-compliance with the condition 8.7 included in the Decision Statement, issued on November 25, 2014.



THE LAW

The *Canadian Environmental Assessment Act, 2012*

CEAA 2012 is available on the Canadian Environmental Assessment Agency's website at <http://laws-lois.justice.gc.ca/eng/acts/c-15.21/index.html>.

Prohibitions

- 6 The proponent of a designated project must not do any act or thing in connection with the carrying out of the designated project, in whole or in part, if that act or thing may cause an environmental effect referred to in subsection 5(1) unless (...)
- (b) the proponent complies with the conditions included in the decision statement that is issued under subsection 31(3) or section 54 to the proponent with respect to that designated project.

Conditions

- 53(1) If the decision maker decides under paragraph 52(1)(a) that the designated project is not likely to cause significant adverse environmental effects referred to in subsection 5(1), or the Governor in Council decides under paragraph 52(4)(a) that the significant adverse environmental effects referred to in that subsection that the designated project is likely to cause are justified in the circumstances, the decision maker must establish the conditions in relation to the environmental effects referred to in that subsection with which the proponent of the designated project must comply.
- 53(2) If the decision maker decides under paragraph 52(1)(b) that the designated project is not likely to cause significant adverse environmental effects referred to in subsection 5(2), or the Governor in Council decides under paragraph 52(4)(a) that the significant adverse environmental effects referred to in that subsection that the designated project is likely to cause are justified in the circumstances, the decision maker must establish the conditions — that are directly linked or necessarily incidental to the exercise of a power or performance of a duty or function by a federal authority that would permit a designated project to be carried out, in whole or in part — in relation to the environmental effects referred to in that subsection with which the proponent of the designated project must comply.
- 53(3) The conditions referred to in subsection (2) take effect only if the federal authority exercises the power or performs the duty or function.



Decision Statement

54(1) The decision maker must issue a decision statement to the proponent of a designated project that

- (a) informs the proponent of the designated project of the decisions made under paragraphs 52(1)(a) and (b) in relation to the designated project and, if a matter was referred to the Governor in Council, of the decision made under subsection 52(4) in relation to the designated project; and

(b) includes any conditions that are established under section 53 in relation to the designated project and that must be complied with by the proponent.

Orders

94(1) If a person designated to verify compliance with this Act believes on reasonable grounds that there is a contravention of this Act, they may, among other things, order a person to

- (a) stop doing something that is in contravention of this Act or cause it to be stopped; or
- (b) take any measure that is necessary in order to comply with this Act or to mitigate the effects of non-compliance.

94(3) Any person to whom an order is given under subsection (1) must comply with the order given.

Injunctions

96(1) If, on the Minister's application, it appears to a court of competent jurisdiction that a person has done, is about to do or is likely to do any act constituting or directed toward the commission of an offence under section 99, the court may issue an injunction ordering the person who is named in the application to

- (a) refrain from doing an act that, in the court's opinion, may constitute or be directed toward the commission of the offence; or
- (b) do an act that, in the opinion of the court, may prevent the commission of the offence.

Contravention

99(1) Any proponent who contravenes section 6 is guilty of an offence punishable on summary conviction and is 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.

99(2) A person who contravenes subsection 94(3) is guilty of an offence punishable on summary conviction and is 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.



Continuing Offence

99(4) If an offence under subsection (1) or (2) is committed or continued on more than one day, it constitutes a separate offence for each day on which it is committed or continued.

CONCLUSION

This warning alleges non-compliance with conditions 2.6 and 8.7 included in the Decision Statement issued to BC Hydro for the Site C Clean Energy Project by the Minister of the Environment pursuant to section 54 of CEAA 2012 thereby contravening CEAA 2012. The undersigned enforcement officer wishes to bring this alleged contravention to CEAA 2012 to your attention in order for you to take the necessary corrective action(s) to comply with the conditions included in the Decision Statement. This document is not a finding of guilt or civil liability, and is not an administrative adjudication.

This warning and the circumstances to which it refers will form part of the Agency's compliance and enforcement records of BC Hydro for the Site C Clean Energy Project, and will be an element of the BC Hydro's compliance history in providing information on compliance patterns and trends that may assist in the ongoing management of the project including determining the frequency of inspections. This warning is a record that is included in the Canadian Environmental Assessment Registry for the Site C Clean Energy Project.

If you require more information on the alleged facts and non-compliance contained in this warning or if you wish to respond to them, please provide comments in writing to the undersigned enforcement officer by October 23, 2015. The Agency would also like to receive in writing information on the actions taken by BC Hydro to rectify the non-compliance stated in this warning to prevent any future occurrence. Any information you provide, will be included, along with the warning letter, in the Canadian Environmental Assessment Registry. This information will be considered by the undersigned enforcement officer in his assessment as to whether further actions are required in the circumstances and a response will be provided. If you do not take all necessary corrective actions to comply with the conditions set out in the Decision Statement issued on November 25, 2014, the undersigned enforcement officer or the Minister of the Environment may take further action to restore BC Hydro's compliance with CEAA 2012.

<Original signed by>

Patrick Lemay
Enforcement Officer
Compliance Promotion and Enforcement Unit
National Programs
Canadian Environmental Assessment Agency
Ottawa, Ontario



c.c.: Chris Parks
British Columbia Environmental Assessment Office

James Smith
British Columbia Ministry of Forests, Lands, and Natural Resource Operations

Brian Naito
Department of Fisheries and Oceans

Jennifer Tennant
Department of the Environment

Tanya Martin
Department of Transport