

# Are you properly maintaining your Environmental Compliance Approvals? By Rosanna DiLabio, ESEMAG.com

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The goal of good business management with respect to risk is to be in compliance with legal requirements. Ensuring compliance minimizes liabilities, can improve efficiencies and, in some cases, can save money.

However, ensuring compliance with often complex environmental regulations such as Environmental Compliance Approvals (ECAs) for air, water or waste emissions can be a daunting undertaking. It demands in-depth knowledge of the regulatory requirements around ECAs and the ECA process. However, from an environmental, moral and legal perspective, being compliant with ECAs is crucial. Fines can be significant and non-compliance can result in damage to both a company's bottom line and its reputation.

As an individual responsible for environmental, health and safety aspects of a workplace, you may find ECAs difficult to manage.

**1. What is Environmental Compliance?** The word compliance is defined in many ways including a) The act of conforming, acquiescing, or yielding; b) Conformity, accordance: as *in compliance with orders*; and c) Cooperation or obedience: *Compliance with the law is expected of all*. Therefore, environmental compliance is the act of conforming, yielding and obeying environmental requirements.

**2. What is an Environmental Compliance Approval?** In Ontario, an Environmental Compliance Approval is required from the Ontario Ministry of the Environment (MOE) for all activities that discharge, or may discharge a contaminant to the natural environment. ECAs can be issued separately for different media such as air and noise, sewage, and waste disposal. Or, they can now encompass more than one media and can include all environmentally related activities at a single site.

All ECAs contain terms and conditions, and a common oversight by companies is to assume that their compliance obligations are met by simply obtaining an ECA. It is compliance with the ECA's terms and conditions that validate it and allow the company to continue to operate equipment and processes that discharge to the environment. Simply put, an ECA is a legal document that allows a company to discharge to the natural environment, provided it complies with its terms and conditions and all applicable regulations.

**3. Typical ECA Terms and Conditions.** There are numerous terms and conditions that can be included in an ECA. Factors that affect the types of terms and conditions include those that are media specific, namely, specific to waste disposal sites or industrial sewage treatment systems, those that are common to all types of ECAs and those that are site specific to address a particular concern at a facility.

Some of the more common terms and conditions found in ECAs are explained in the following sections:

*a) Requirement to Demonstrate Compliance with MOE Limits.* ECAs with Limited Operational Flexibility, or flexible ECAs, provide a company with the ability to make changes without having to reapply for a new or amended ECA as long as the operational limit for the company is not exceeded. Flexible Air and Noise ECAs currently only incorporate emissions of chemicals, noise, odour, vibration and dust (hereafter referred to as air and noise emissions). This type of ECA requires a company to:

- Keep an up to date summary of their air and noise emissions, demonstrating compliance with the MOE applicable limits;
- Review chemicals not previously included as part of the original ECA application and add these new chemicals to the company's emissions summary; and,
- Update any equipment changes that may impact air or noise emissions.

These updates and changes are to be recorded in prescriptive facility logs, which are utilized to revise the facility's "Emission Summary and Dispersion Modelling" (ESDM) report and the "Acoustic Assessment Report" (AAR). Facility logs, ESDM report and AAR are to be available to the MOE for review at any time. In addition, summary tables of these reports are to be available to any member of the public requesting them, during normal working hours.

Unlike the majority of air and noise emissions which are modeled and rarely measured, all sewage ECAs require effluent discharges to be sampled, analyzed and compared to MOE effluent treatment objectives and limits. Treatment objectives are based on the expected performance from the approved sewage system. However, limits outlined in the ECA must be met and are usually based on Provincial Water Quality Objectives (PWQO).

Limits for waste disposal sites are usually self-imposed and subject to MOE approval. Limits are usually stated in the form of maximum quantities of materials that can be processed, stored and disposed of by a particular operation in any given day.

*b) Submission of Annual Reports.* Flexible Air and Noise, Industrial Sewage and Waste Disposal Site ECAs all require the submission of an annual report to the MOE. Flexible Air and Noise ECA reports need to include chemical and equipment changes to the company's operation in the previous calendar year, including an up to date air and noise emissions summary. Also needed is a signed statement that the company's operations were conducted in accordance with the terms and conditions of the ECA.

Industrial Sewage ECAs require an annual performance report on the treatment system's performance, with full analysis of the sampling results, operating difficulties encountered, maintenance completed on the treatment system, and other information specific to the treatment system's operation and performance.

Similarly, Waste Disposal site ECAs require an annual report that includes the types, quantities and origins of wastes accepted and disposed of, operational issues at the site that could negatively affect the environment, with actions taken to minimize these effects. Also needed is a signed statement that the company's operations were conducted in accordance with the terms and conditions of the ECA.

*c) Operating and Maintenance Procedures.* All ECAs will include the requirement to develop and implement maintenance procedures and programs for all equipment that is a significant source of emissions and to ensure proper maintenance is completed on this equipment. This must be completed, according to best industry practices and/or manufacturer's recommendations. Procedures for proper operation of this equipment must also be developed to prevent process upsets that can negatively impact the environment.

*d) Environmental Complaints:* A common term and condition of an ECA is for the proponent to provide a method for managing complaints that may result from their operations. This condition ensures that the proponent takes complaints seriously and manages them appropriately. Typical requirements include a form to log complaints, either electronically, or in a written form, that identify the complainant, time date and nature of the complaint and any other pertinent information, including the weather at the time the issue occurred.

As well, there is a requirement to have a completed report filed at the site that includes results of the complaint investigation, possible cause of the complaint, measures taken to mitigate the cause, and what measures have been implemented to prevent its reoccurrence. In some cases, the MOE must be notified at the time of the complaint or provided with a copy of the written investigation report, or both, depending on the term specified in the ECA.

*e) Maintenance of Records.* Maintaining records is a very important part of demonstrating compliance with the terms and conditions of an ECA. If a record is not available to demonstrate that an ECA term or condition has been complied with, the MOE will classify it as non-compliance. Waste Disposal Site ECAs usually require records be retained for two years. Sewage ECAs five years, and for Flexible air and Noise ECAs, records must be maintained for up to seven years.

*f) Additional Terms and Conditions.* Additional site-specific conditions may be included in the ECA, if specific operating conditions are required for equipment, such as thermal oxidizers or heat treating ovens. A Dust Management Plan may be required for emissions associated with dust resulting from the facility's operations. If noise mitigation is required, but not in place when the ECA application was submitted to the MOE, there will be a requirement to install noise abatement equipment within a specified time once the ECA is issued. An Acoustic Audit will also be required once the mitigation measures are in place.

These are just some examples of additional terms and conditions that can be included in an ECA.

**4. Maintaining Environmental Compliance Approvals.** In order to ensure compliance with the ECA's terms and conditions, begin by reviewing it in detail as soon as it is received. If it is difficult to understand the requirements, contact the consultant who prepared the ECA application or seek legal advice.

Note the ECA issue date and the due dates of the required tasks stated in the ECA's terms and conditions. Develop an action plan to ensure the tasks will be met within the required time frame and follow up to ensure they are completed. Make sure compliance efforts are documented in the event that the MOE audits the facility. Companies that are ISO 14000 certified, or have an Environmental Management System in place, may be able to incorporate this into their programs. Others may need assistance in establishing a system to manage their ECA terms and conditions.

Once a compliance management system has been established, it is important to periodically review its performance through auditing. This requires a review of the requirements of the ECA and then checking to ensure that these requirements are being met. This can be done internally by company staff or externally through a third party, such as a consultant. Gaps identified as a result of the audit must then be addressed appropriately.

Auditing is particularly important to ensure that changes in operations or equipment at the facility are noted, so that the ECA can be amended if required. A common finding during an MOE facility inspection is that a company's ECA requires amendments because of changes in processes and/or equipment, which were not accounted for. Gaps identified during the auditing process are also an indication that the compliance system needs to be revised.

In summary, it is important to read the Environmental Compliance Approval carefully and ensure its requirements are fully understood. Develop the appropriate forms and systems to document compliance with the ECA's terms and conditions. Ensure that there is supporting documentation of the compliance systems and that this documentation is stored in a well-organized filing system, available for inspection by the MOE. Audit the compliance systems regularly. Revised the compliance system and if required, the ECA as needed.

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