

B R E A T H E
the lung association

R E S P I R E Z
l'association pulmonaire

**Recommendations for Changes Needed Regarding the
Environmental Impact Assessment Regulation, NB Reg 87-83,
a Regulation Under the Clean Environment Act.**

Developed by a Committee* of the New Brunswick Lung Association

Contact:

Barbara MacKinnon PhD
President and CEO
(506) 455-8961 Ext 102
barb.mackinnon@nb.lung.ca

Recommendations for changes needed regarding the Environmental Impact Assessment Regulation, NB Reg 87-83, a regulation under the Clean Environment Act.

Rationale

We have an excellent window of opportunity for the Province of New Brunswick to modernize legislation that assesses and mitigates impacts from proposed industrial activities. During the Covid-19 Pandemic, New Brunswickers have become more aware of the importance of health protection and have been proud of the actions the multi-party government committee has taken. We want to see our government continue to be a national leader. Given that the New Brunswick Environmental Impact Assessment process is very out-of-date, now is an excellent time to develop new legislation that will be supported by New Brunswickers.

New Brunswick's Environmental Impact Assessment Regulation (EIA) is considerably out of date and has many weaknesses that continue to allow both environmental degradation and human health risks to result from industrial enterprises. The current EIA is not aligned with the Federal Impact Assessments Act.

The current EIA process has inconsistencies that cause uncertainties and inefficiencies experienced by the proponent. These could discourage potential developers from choosing NB for their project. Developers need to be confident in a consistent and transparent assessment process. The New Brunswick government has committed to responsible resource development and sound legislation is imperative to managing our natural resources on which all of us rely.

New Brunswick struggles with a declining economic situation. The cost of health care in the province is steadily increasing. Full cost-accounting of new enterprises is essential. Our government must take into account the health and social costs of new enterprises when going through the approval process for new initiatives. A strong modernized Impact Assessment Act can help to greatly reduce the negative health and social costs of new projects.

The current government has committed to working with other political parties to responsibly develop the province's natural resources. It has also renewed its pledge to respect communities and First Nations who are pursuing resource-based jobs and investment. The **government affirmed that it will institute objective, science-based oversight of development projects** and establish a legislative officer responsible for science and climate change. Given this affirmation, we submit these recommendations for improvement and request that a legislative committee, with stakeholder participation, be established, to ensure that the regulation is updated to reflect the improvements recommended below. Sound legislation is imperative to managing our natural resources which we all rely on for food, shelter, and trade for the prosperity of generations to come.

The weaknesses in the current EIA regulation are based on the following observations:

NB EIA (2018) guidelines specify that the general approach a proponent must follow **should be consistent with current and common EIA methodology**. Current NB EIA methodologies do not align with national and provincial best practices. Modernized EIA regulations can be found in the new federal Bill C-69 and the British Columbia Environmental Assessment Act (2018).

Current regulations and **guidelines lack a formal statement of guiding principles** other than those specified in the government's Duty to Consult Policy (e.g.; integrity and good faith, respect, government's duty, reciprocal responsibility, as well as transparency and accountability).

The current provincial EIA process is **limited in assessment of anticipated impacts** on the environment, such as physical and natural features, cultural features, and existing and historic land uses.

The current provincial EIA process **does not include a mandated, strong, transparent health impact assessment** component. The World Health Organization and Health Canada have recognized the need for and benefits of addressing human health and wellbeing in EIA (Public Health Agency of Canada. 2019). Recent literature points to the need to focus linkages between project activities and the determinants of health and well-being. Determinants of health are factors such as income, physical environments, health services, and social support networks. Focussing on health determinants would simplify the complexity of pathways that connect project activities to human health impacts (Noble, B. F. 2015; Public Health Agency of Canada 2019). Both the Canada Impact Assessment Act (2018) and the British Columbia Environment Assessment Act (2018) require that all interconnections between human health and other valued components and interactions between effects must be described. An Impact Statement is needed to provide an assessment of adverse and positive effects on human health or changes to the baseline community health profile based on changes to the environment, health, social and economic conditions, focusing on effects to health outcomes, risks or social determinants (Impact Assessment Agency of Canada 2019).

Schedule A of the current Regulation lists the types of projects that must be registered under the Regulation. Currently there are 24 categories and **Schedule A needs to be expanded**.

The current level of public consultation on determination reviews is a substantial improvement over what existed prior to 2004. Yet, there are two **significant risks associated with the use of a proponent-driven public consultation**:

- the risk that the proponent doesn't complete an adequate program of public consultation; and
- the risk that the proponent doesn't accurately report results of public consultation.

The current regulation **does not effectively or transparently incorporate scientific evidence into decision-making**, nor does it provide for timelines that would allow for credible scientific methods to be implemented.

Decision-making associated with the EIA process is not sufficiently transparent to allow the proponent, the public and stakeholders to understand the rationale for decisions taken. The

New Brunswick Auditor General found no clear rationale, on a project by project basis, for why EIA approvals or certificates of determination were issued. Further, no explanations are provided as to how major issues identified during the review have been addressed. This lack of transparency leads to uncertainties and inefficiencies borne by the proponent that could discourage potential developers from choosing New Brunswick for their project. Developers need to be confident in a consistent and transparent assessment process to be confident in investing in the assessment process.

There is insufficient monitoring to determine whether proponents are in compliance with conditions of approval and other commitments made during EIA process.

Due to inadequate monitoring, there is a significant risk that **cases of non-compliance are not being identified**, and as a result no enforcement action initiated.

There is **no system in place to measure and report on the effectiveness** of the environmental impact assessment program in achieving its objectives.

EIA Regulation 87-83 has only been subject to limited changes since it was introduced in 1987. **Mandated regular reviews of the Regulation are needed.**

Recommendations and Best Practices

We are asking that the province create a new Impact Assessment Act that is modelled after updated Acts in the leading jurisdictions in Canada, notably the Federal Impact Assessment Act (2019) and the British Columbia Environmental Assessment Act (2018). Modern Impact Assessment processes include consideration of human health, community and social impacts and compounded impacts. Thus Impact Assessment now goes beyond environmental impacts, and responsibility will involve more than one government department. The new Impact Assessment should therefore be a stand-alone Impact Assessment Act.

1. The NB Impact Assessment Act should be consistent with current and common IA methodology.

As noted by Morgan (2012) whenever significance decision or judgements are to be made, the IA process should accommodate the values of those potentially affected by the proposed activity, and therefore, governments and proponents should be more aware of, and sensitive to, the inherent power relations found in decision-making processes that can hinder effective participation and exacerbate environmental injustice

IA has progressed steadily over the last 15–20 years, gaining particular momentum from rising political recognition of the problems associated with climate change, loss of biodiversity, threats to freshwater sources and water quality, damage to marine areas and other forms of global environmental change.

Many academics support the concept of next-generation IA, where the objective is to “protect and enhance the resilience of desirable bio-physical, socio-ecological and human systems and to foster

and facilitate creative innovation and just transitions to more sustainable practices. (Gibson, Doelle, and Sinclair, 2015).

2. The NB Impact Assessment Act requires a formal statement of guiding principles.

There is growing appreciation within academics and the general Canadian public that EIA processes need to move beyond the bio-physical environment to encompass all impacts, both positive and negative, likely to result from a project and included social issues, economic opportunities, human health impacts and cultural concerns. Protection of vulnerable populations (both human and other living organisms) must be paramount in all assessments.

3. The NB Impact Assessment Act needs to expand analysis of anticipated impacts.

Other jurisdictions have expanded IA to include changes to the environment, human health, social wellbeing, economic conditions, Indigenous communities, as well as Aboriginal and Treaty Rights, and the positive and negative consequences of these changes that are likely to be caused by the carrying out of the project, including: (i) the effects of malfunctions or accidents that may occur in connection with the project; (ii) any cumulative effects that are likely to result from the project in combination with other activities that have been or will be carried out; and (iii) the result of any interaction between those effects.

4. The NB Impact Assessment Act must include a stand-alone, transparent health impact assessment process that proactively engages stakeholders. The full cost of negative health and other social outcomes must be calculated and balanced with the financial benefits of the project.

The following suggestion to improve NB legislation and regulation is largely drawn from the federal Impact Assessment Act (2019) and BC Environmental Assessment Act (2018).

A robust and clear approach for the assessment of human and community well-being is important. Early input on the assessment approach should be required from relevant government agencies, Indigenous nations and local communities so that the needs and requirements of all parties are understood. The assessment approach should be scaled appropriately to each project with consideration of the anticipated nature of the potential effects. Consistent with best practices in human and community well-being assessments, proponents should consider both quantitative and qualitative data (including data obtained through participatory processes) collected through a variety of methods to inform an assessment (Environmental Assessment Office 2020). As outlined in Impact Statement Guidelines (Impact Assessment Agency of Canada 2019) the proponent's Impact Statement should describe the ongoing and proposed public engagement activities regarding the designated project. In particular, the Impact Statement should provide a description of efforts made to distribute project information and provide a description of information and materials that were distributed during the consultation process.

The proponent should describe how community and Indigenous knowledge was used to collect baseline data and assess health effects and disaggregate the source of community knowledge by representation by sex, age and other community-relevant identity factors to support identification of disproportionate effects through the application of gender-based analysis (GBA+). In assessing effects, the analysis should consider circumstances in a community where diverse subgroups,

because of their particular circumstances in a community, could experience adverse effects from the designated project more severely than others or be excluded from potential benefits (Public Health Agency of Canada 2019)

The Impact Statement should also indicate the methods used, where the consultation was held, the persons, organizations and diverse groups consulted, the views expressed and the extent to which this information was incorporated in the design of the project as well as in the Impact Assessment. The Impact Statement (assessment) should provide a summary of key issues related to the project that were raised through engagement with the public and the potential environmental, health, social and economic effects, including disproportionate impacts on diverse subgroups within the population. The Impact Statement should also describe any outstanding issues raised by the public and ways to address them, such as alternative means, specific mitigation measures or specific monitoring and follow-up programs to deal with uncertainty. The Impact Statement should provide details and commitments regarding how the public will be kept involved if the project were to be approved and were to proceed, such as public involvement in follow-up and monitoring programs. Lastly, the Impact Statement must identify public concerns that were not addressed, if any, and provide reasons why the concerns were not addressed (Impact Assessment Agency of Canada 2019).

The cost of health care in the province is steadily increasing. Full cost-accounting of new enterprises is long overdue. Our government must take into account the health and social costs of new enterprises when going through the approval process for new initiatives. A strong modernized Impact Assessment Act can help to greatly reduce the negative health and social costs of new projects.

Resources for including best practices for incorporating HIAs into Impact Assessments are available through WHO/Europe which provides support for developing methodologies and tools, carrying out assessments and reviews, and advising on policy options.

<https://www.euro.who.int/en/health-topics/environment-and-health/health-impact-assessment>

5. Schedule A needs to be either expanded or changed to show clear parameters for risks without listing specific activities.

Certain types of projects not currently registered under the Regulation have significant potential impacts on the environment. These include gravel pits and quarries, pipelines under eight kilometers in length, and primary industries (i.e. agriculture, forestry, and aquaculture operations). While some of these areas are covered under separate legislation and regulations, that does not necessarily mean that they are reviewed with the same rigor that is applied to projects registered under an Impact Assessment Act.

Given that there are many different types of projects that will impact the environment and human health and not all can be listed, consideration should be given to dispensing with a list of activities and instead providing a comprehensive list of parameters that would trigger the need for an IA (sensitive ecosystems, types of emissions or other impacts, proximity to communities, etc.).

6. The NB Impact Assessment Act needs more oversight and rigor for engagement with First Nations and the public (on reviews committees, through notification of standing lists of interested parties) and for any consultation.

As noted by the 2008 Auditor General's report, proponents should be required to hold public meetings, unless they provide evidence to the branch that such meetings would not add value to the public consultation process. This places the onus on proponents to seek exemption from this requirement.

NGO stakeholder groups have expressed concerns about the government's reliance on proponent reporting of results and concerns expressed by the public at determination review phase meetings. There is a risk that proponent reporting may not be accurate or complete. Note that the final proponent public consultation report must be made available for public review through the proponent and the Government of New Brunswick.

Intervener Funding must be made available to give stakeholders the means to hire expertise, to ensure a balance of evidence and viewpoints.

7. The NB Impact Assessment Act needs to more effectively and transparently incorporate scientific evidence into decision-making.

Current best practices recognize that evidence comes in many forms and includes Indigenous knowledge and community knowledge. A sustainability based EIA framework endeavors to integrate all relevant evidence that supports outcomes within the environmental, health, social, cultural and economic sustainability pillars.

Regarding evidence-based IA, best practices now include:

- IA legislation requires that all phases of the assessment use be included in the assessment and integrate the best available scientific information and methods.
- Legislation requires the development of a central, consolidated and publicly available government database to house all baseline and monitoring data collected for EIA purposes.
- IA legislation provides any IA authority with power to compel expertise from government scientists/experts and to retain external scientists/experts to provide technical expertise as required.
- Any IA authority has the statutory authority to verify the scientific accuracy of studies across all pillars of sustainability.
- Assessments integrate the best evidence from science, Indigenous knowledge and community knowledge through a framework determined in collaboration with Indigenous Groups, knowledge holders and scientists.
- IA legislation requires that any IA authority lead the development of the Impact Statement.
- IA decisions reference the key supporting evidence they rely upon, including the criteria and trade-offs used to achieve sustainability outcomes.

8. Decision-making associated with The NB Impact Assessment Act needs to be transparent.

The NB Auditor General was unable to find clear documented, readily-accessible explanations supporting the NB Environment Department decisions that would allow the public to better understand the rationale for decisions made. Such information is captured by the provincial officials and presented to the Minister in the form of a briefing memo.

9. Approved projects need regular standardized and publicly transparent monitoring, using best practices.

Government should develop, implement, and maintain a formal monitoring process that allows it to adequately monitor proponent compliance with conditions of Certificates of Determination and IA approvals and commitments made in registration and other documents. Such a process should include the requirement for the Project Assessment and Approvals Branch to verify proponent assertions about their compliance with those conditions.

10. Cases of non-compliance must be identified, made public and quickly remedied.

11. A system to measure and report on the effectiveness of the The NB Impact Assessment Act needs to be developed and implemented.

12. Regular reviews of the Act are needed.

***Committee Members**

William Anderson, PhD.

Chris Buse, PhD. University of British Columbia Postdoctoral Fellow and Affiliated Researcher with the Centre for Environmental Assessment Research

Gordon Dalzell, Saint John Citizen's Coalition for Clean Air

Barbara MacKinnon, PhD. President and CEO New Brunswick Lung Association

References

- Environmental Assessment Office. 2020. *Human and community well-being: Guidelines for assessing social, economic, cultural and health effects in environmental assessments in B.C. Version 1.0*. Environmental Assessment Office, Victoria, British Columbia, Canada.
- Impact Assessment Agency of Canada. 2019. *Policy and guidance Practitioner's Guide to the Impact Assessment Act: Tailored Impact Statement Guidelines Template for Designated Projects Subject to the Impact Assessment Act (available at: https://www.canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/tailored-impact-statement-guidelines-projects-impact-assessment-act.html#_Toc15652163)*. Impact Assessment Agency of Canada, Ottawa, Ontario, Canada.
- Noble, B. F. 2015. *Introduction to environmental impact assessment: a guide to principles and practice*. Oxford University Press, Don Mills. Ontario, Canada.
- Public Health Agency of Canada. 2019. *Social Determinants of Health and Health Inequalities (available at <https://www.canada.ca/en/public-health/services/health->*

[promotion/population-health/what-determines-health.html](https://www.canada.ca/en/public-health/services/promotion/population-health/what-determines-health.html)). Public Health Agency of Canada, Ottawa, Ontario, Canada.