

# Chapter 4

## Department of Environment

### Environmental Impact

### Assessment

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# Department of Environment Environmental Impact Assessment

## Introduction

**4.1** Environmental impact assessments (EIAs) and their effect on provincial development and the environment have become a topic of considerable interest as public awareness of our impacts on the environment increases. As you will see in this chapter, we set a couple of objectives for our work on environmental impact assessment. Necessarily these are process-oriented. However, ultimately we hope that this chapter will:

- improve clarity around what EIAs are and are not intended to accomplish; and
- establish that having a well-functioning EIA process in the Province does, in fact, provide tangible benefits for both the environment and those organizations whose projects are subject to them.

**4.2** Ultimately the integrity and fairness of the environmental impact assessment process, both as perceived and in fact, is what will allow it to continue to contribute to the sustainable development that is so important to the future of the Province. Therefore, ensuring the integrity and fairness of the process is what we concentrated on in completing our audit and making our recommendations.

## Background Environmental Impact Assessment

**4.3** According to the Province of New Brunswick website, one of the mandates of the Department of Environment (DENV) is to:

*Provide integrated stewardship through planning and management of land use, zoning development and waste management issues.*

**4.4** The International Association for Impact Assessment (IAIA) has defined environmental impact assessment (EIA) as:

*...the process of identifying, predicting, evaluating and mitigating the biophysical, social, and other relevant effects of development proposals prior to major decisions being taken and commitments made.*

**4.5** Recognition was given to the importance of EIA to New Brunswick in June 1987, when New Brunswick Regulation 87-83 under the *Clean Environment Act*, i.e. the Environmental Impact Assessment Regulation, was enacted by the government of the day.

**4.6** The Project Assessment and Approvals Branch, a part of DENV's Environmental Management Division, is responsible for the implementation and administration of the Environmental Impact Assessment (EIA) Regulation under its planning mandate. It is also responsible for the implementation of the regulatory measures under the *Clean Air Act*, the *Clean Environment Act* and the *Clean Water Act* under its operational mandate.

**4.7** According to the DENV brochure, "Environmental Impact Assessment in New Brunswick", environmental impact assessment is essentially a planning tool.

*...(EIA) is a process through which the environmental impacts potentially resulting from a proposed project are identified and assessed early in the planning process. EIA identifies steps that can be taken to avoid negative environmental impacts or reduce them to acceptable levels before they occur. EIA therefore, represents a proactive, preventative approach to environmental management and protection.*

**4.8** The Assessments section of the branch coordinates the review of the project-related information by provincial and federal agencies. DENV has recognized that environmental impact assessment supports the integration of environmental objectives with economic objectives at the early design stages of a project, before final decisions are made. It also avoids costly after the fact remedial measures.

**4.9** Key challenges associated with environmental impact assessment include:

- balancing the expectations of the public and other stakeholders with the needs of the project proponent;
- ensuring that the process proceeds in a predictable and timely manner; and
- coordinating the work of provincial, municipal, and federal government departments and agencies.

**4.10** Meeting these challenges on a day to day basis is the responsibility of the management and staff of the branch.

## Phases of EIA

**4.11** There are two distinct phases associated with environmental impact assessment. From Regulation 87-83, these are:

- the phase ending with the Minister's determination as to whether the undertaking may be carried on without the completion of an environmental impact assessment (i.e. the determination review phase); and if necessary
- the environmental impact assessment phase (i.e. the comprehensive review phase).

**4.12** The steps in each phase are described in the sections that follow.

## Determination Review Phase

**4.13** All projects falling under the EIA regulation are subject to a determination review. See Appendix 1 for a list of the types of projects included under the Regulation. The review process includes the following components:

1. The individual, private organization, or government department or agency that proposes a type of project covered in Schedule A of the EIA Regulation (i.e. the proponent) must formally register details of their proposal with the Project Assessment and Approvals Branch. They complete a registration document that is to give full and accurate descriptions of the project location, proposed activities, the existing environment, potential impacts, and proposed mitigation. As part of the registration process, the proponent must demonstrate that potentially-affected members of the public and other stakeholders have been given the opportunity to comment on the project. Further, the proponent must provide a report summarizing comments received, along with their responses to those comments. This report is typically attached to the

registration document or is submitted within sixty days of registration.

2. A branch Project Manager is assigned to coordinate the review of the project. The Project Manager draws together a Technical Review Committee (TRC), comprised of experts from federal and provincial government departments and agencies and from affected district planning commissions or municipalities. The TRC identifies and evaluates the environmental issues and concerns surrounding the proposed project from material presented in the registration document.
3. Typically, the TRC needs additional information to complete its work. One (or more) formal letters are sent to the proponent requesting additional required information. The proponent must respond to these letters by providing requested information in order to keep the review moving forward.
4. Once all TRC members are satisfied that sufficient information has been received to answer all outstanding concerns, the TRC completes its process of identifying all potentially significant environmental impacts of the project. They also suggest actions that must be taken by the proponent in order to avoid or mitigate those potential impacts. These actions are typically stated in the form of conditions pursuant to the first bullet point of step 6 below.
5. The responsible Project Manager then prepares a briefing document for the Minister of Environment summarizing findings of the determination review, including a recommendation on how to proceed. The document also includes recommended conditions to attach to the Certificate of Determination in cases where the Minister determines that a full environmental impact assessment is not warranted.
6. The Minister then has 30 days to make one of three possible decisions. The Minister may either:
  - issue a Certificate of Determination that allows the project to proceed subject to listed conditions;
  - deny the project with the agreement of the Lieutenant - Governor in Council (i.e. the Cabinet); or

- decide that the project should be subject to a comprehensive review because further, more in depth, study is needed to fully understand all the environmental impacts of the project.

### ***Comprehensive Review***

**4.14** Where the Minister decides that a comprehensive review is warranted, the following additional steps are taken.

1. The TRC continues to function and the assigned branch Project Manager continues to coordinate the review process.
2. Within 60 days of the decision to go forward with a comprehensive review, the Minister releases draft guidelines for a minimum 30 day public review. The guidelines outline the requirements for the review and identify the important biological, physical and socio-economic issues that must be considered in the assessment.
3. Public comments are incorporated into the draft guidelines and a final version of the guidelines is provided to the proponent.
4. The proponent prepares Terms of Reference for the review which outline specifically how the guidelines will be addressed.
5. The proponent has the study completed and a draft report prepared, typically by a contracted environmental consultant.
6. The TRC reviews the draft report to ensure it satisfies the guidelines. Once the guidelines have been met to the satisfaction of the TRC, the proponent issues a final report.
7. The branch Project Manager prepares a General Review Statement which summarizes TRC comments generated during the comprehensive review and describes how any issues were resolved. In addition, a summary of the EIA Report is also prepared.
8. The Minister releases the Final EIA Report, General Review Statement, and EIA Summary for public review and sets a date and location for a public meeting or meetings. The purpose of the meeting or meetings is to provide all interested parties with an opportunity to provide input on the proposed project, the Final EIA Report, and/or the EIA process in New Brunswick in general.
9. Following the public meeting, interested parties have an additional fifteen days to submit written comments about the proposal. At the

end of the fifteen days, a summary of public participation is prepared and made publicly available.

10. The Minister submits a recommendation concerning the project, including conditions to be included if the project is approved, to Cabinet. Cabinet either approves or denies the project.

## Scope

**4.15** Our audit objectives for this audit were:

- to determine whether DENV is carrying out its key roles and responsibilities under the NB Environmental Impact Assessment Regulation (87-83) and related departmental guidelines with due regard for economy, efficiency and effectiveness; and
- to identify key risks associated with the provincial EIA process and determine the extent to which those risks are being managed.

**4.16** In completing our work, we selected and performed tests on fifteen registered project files for which determination or comprehensive reviews had been completed. We reviewed branch policies and various other reports prepared within DENV and elsewhere. We also held discussions with representatives of the Project Assessment and Approvals Branch and various proponent and stakeholder representatives. Finally, we reviewed the EIA processes followed in other Canadian jurisdictions.

## Results in brief

**4.17** We have concluded that DENV is carrying out most of its key roles and responsibilities under the NB Environmental Impact Assessment Regulation (87-83) and related departmental guidelines with due regard for economy, efficiency and effectiveness.

**4.18** Further, we have concluded that most identified risks associated with environmental impact assessment are being adequately managed by DENV.

**4.19** However, we have identified weaknesses in the following areas:

- We feel that Project Assessment and Approvals Branch monitoring of approval conditions and other commitments made by proponents during the EIA process needs improvement. To that end we have recommended that the branch develop, implement, and maintain a formal monitoring process.

- We also feel that the process followed for getting public input needs improvement and we have made recommendations to address that area.
- Further, in order to improve the transparency of decisions taken, we have recommended that the DENV website provide, on a project by project basis, a rationale for certificates of determination and EIA approvals issued and explanations as to how major concerns raised by the proponent and/or stakeholders during the review process have been addressed.

**4.20** Our findings and conclusions for specific audit areas are summarized in the second column of the table in Appendix 2, “Summary of Audit Findings”. The criteria shown in the first column of the table in Appendix 2 established the framework for our audit of the environmental impact assessment process. The criteria for this audit were agreed to both by representatives of DENV and our Office.

**4.21** A more detailed discussion of each audit area follows in the Detailed Findings section of this chapter.

## Testing of assessment files

**4.22** We used the *Record of EIA Registrations and Determinations* on the DENV website at 20 July 2007 to select a group of registered projects for testing. At that time the projects shown in the following two tables were listed.

*Exhibit 4.1 – Closed Project Files*

Outcome	Number of Projects	% of Completed Projects
Certificate of Determination Issued	92	82.9
EIA Approval Issued	1	0.9
Approval Denied	2	1.8
Cancelled (i.e. Due to lack of proponent response)	8	7.2
Withdrawn by Proponent	8	7.2
<b>Total</b>	<b>111</b>	<b>100.0</b>



Exhibit 4.2 – Open Project Files

Status	Number of Projects	% of Projects in Progress
Awaiting Additional Information (i.e. from proponent)	51	68.0
Determination Review in Progress (i.e. TRC reviewing proponent documents)	20	26.7
Comprehensive EIA Required (i.e. and in progress)	4	5.3
<b>Total</b>	<b>75</b>	<b>100.0</b>

**4.23** We selected a total of fifteen EIA files for testing. These included twelve projects for which a certificate of determination had been issued and three projects which were subject to a comprehensive EIA review.

**4.24** The twelve determination reviews we tested ran the gamut of project types, including installation of new wastewater treatment systems, proposed peat bog harvesting operations, road construction, mines, and a sustainable development plan.

**4.25** The full EIAs we reviewed included;

- the liquid natural gas (LNG) terminal in Saint John;
- the proposed modifications to the Petitcodiac River Causeway; and
- the removal of the Eel River Dam.

**4.26** In all cases, we found that the level and quality of documentation on file allowed us to follow the EIA review process undertaken. Our findings relating to the specifics of the review process are detailed in the sections that follow. These specifics include:

- registration of projects;
- proponent and public input;
- information to decision-makers;
- transparency of decision-making;
- reasonableness of time and effort;
- timeliness of assessments;

- monitoring of proponent compliance; and
- enforcement.

## Registration of projects

### Current requirements

**4.27** Regulation 87-83 under the *Clean Environment Act* states in Section 5(2) that:

*A proponent of an undertaking shall register the undertaking with the Minister by completing a form provided by the Minister for that purpose and delivering to the Minister the completed form ....*

**4.28** Schedule A of the Regulation lists twenty-four distinct types of undertakings that must be registered. They are listed in Appendix 1 of this chapter.

**4.29** It is very important that all projects be registered as required under the Regulation. Registered projects are subject to review under the Regulation, meaning that potential adverse environmental impacts are analyzed, and where necessary proponents are required to avoid or modify the activities that may lead to those impacts.

**4.30** A failure to register a project listed in Schedule A may mean that significant environmental impacts occur that could have been avoided or mitigated. Further, despite a short-term gain on the part of a proponent, it may mean that the proponent's costs are far greater in the longer term because they must ultimately deal with environmental problems created by their project. One consultant we talked to, in fact, stated that through the EIA review process developers learn that they must build environmental management into their long term plans.

**4.31** Because of the number of environmental and other regulations to which a proponent is subject in implementing a project, there are many contact points through which a proponent may become aware that they must register their project. For large projects, proponents typically hire private sector environmental consultants who are familiar with proponent requirements under the EIA Regulation. Also, the Project Assessment and Approvals Branch itself often carries out educational outreach activities designed to inform potential developers about the requirement to register projects and what that entails.

**4.32** A DENV representative indicated that an enhanced Registration Guide, an enhanced EIA website and a new EIA brochure were released in 2004 to help raise the profile of the EIA Regulation and to ensure proponents were aware of EIA triggers and requirements.

Further, DENV staff may proactively communicate with potential proponents on a case-by-case basis to remind them of EIA requirements. The branch also indicated that they routinely comment on subdivision proposals and remind municipal planning agencies of the potential EIA requirements.

**4.33** There are also many means through which the branch may become aware of projects. Due to a recent reorganization within DENV, environmental approvals are now administered by the branch. Also, the branch maintains a close liaison with other branches within DENV. Further, DENV regional staff serve as the “eyes and ears” for the branch throughout the Province and report on planned projects in their regions. Regional inspectors are trained to ensure that they are familiar with all Acts and Regulations under the department’s mandate, including the EIA Regulation. Finally, the branch regularly interacts with other government departments to ensure that they are aware of regulatory requirements.

**4.34** Stakeholder groups can also be important in ensuring that applicable projects get registered under the Regulation. Non-governmental organizations (NGOs) and local groups are also aware of the need to register and often inform the branch when they become aware that projects are planned. DENV representatives informed us that they attempt to raise awareness among stakeholder groups by regularly making public presentations to them about the process.

**4.35** All fifteen projects we reviewed in our testing were registered on a timely basis.

### ***Conclusion – registration of projects***

**4.36** Based upon our testing and discussions with branch representatives and others, we would conclude that the current process is working in ensuring that all required projects are registered under the Regulation.

### **Proponent and public input** ***Section introduction***

**4.37** Because the proponent and the public are assuming significant risks, it is important that both be allowed to contribute to the review of a proposed project in a meaningful way. Technical Review Committee (TRC) members generally have a good breadth and depth of knowledge about the potential impacts of a project in their individual areas of expertise, but they cannot make appropriate overall judgments about the project without the cooperation of both the proponent and the public in providing information. A process that encourages proponent and public involvement is critical.

***Process for getting proponent input***

**4.38** The Project Assessment and Approvals Branch publishes and regularly updates the Registration Guide and Guide to EIA in New Brunswick for reference by proponents. It is available both at the Department's internet site, and in hardcopy, and provides a clear description of the proponent's responsibilities under the Regulation, and how the review process works. The branch indicated that the Guide was significantly upgraded in 2004 and now includes a detailed guide to information requirements including potential issues, a suggested reporting format, potential study methodologies, and potential sources of information. The Guide was also supplemented by a series of sector-specific guidelines at that time.

**4.39** The branch informed us that pre-submission consultation by the proponent is encouraged and actually takes place for approximately ninety percent of the reviews. Further, they indicated that the branch will review draft submissions and provide preliminary comments based on previous experience with similar projects at the request of the proponent. At the request of proponents, EIA project managers will also arrange for and chair direct meetings between the proponent and key TRC members to clarify issues that arise during the review.

**4.40** As discussed earlier in this chapter, the proponent prepares and files a registration document with DENV as the first step of the EIA process. It contains key information about the project and its potential environmental impacts. Once this document has been reviewed by the TRC, a written response is sent to the proponent. It contains a clear description of any deficiencies in the submission along with queries from the TRC, and the proponent is invited to clarify the submission and/or submit additional information. Occasionally, additional query letters are sent to the proponent after the initial response is answered. This leads to a useful back and forth discussion between the proponent and the TRC that serves to crystallize the issues that need to be addressed in certificate of determination conditions, or to be further explored in a comprehensive review.

**4.41** The proponent is required to prepare detailed Terms of Reference and a final report for comprehensive EIAs, based on guidelines established by the branch. Both documents are reviewed by the TRC to ensure that they meet all requirements included in the guidelines.

***Process for getting public input***

**4.42** Since 2004, proponent-sponsored public consultation has been required for all registered projects during the determination review phase. The public and various interested stakeholder groups are given

the opportunity to ask questions and provide comments directly to the proponent.

**4.43** Essentially, the process is intended to function as described in the branch document, “A Guide to Environmental Impact Assessment in New Brunswick.”

*It is the proponent's responsibility to design, implement and document the public involvement program, and to provide documentation of the program and its results to the Department of Environment. ... The overall goal of public involvement at the Registration stage of the EIA process is to ensure that those potentially affected by a project are aware of the Registration, are able to obtain additional information about the project, and are able to express any concerns they may have. While it is recognized that not all concerns can be addressed to the satisfaction of all parties, the proponent is expected to respond to the public in an open and forthright manner and resolve as many of their concerns as possible, while clearly identifying those which could not be resolved. A report documenting the public involvement process must be provided to the Department [of] Environment and as part of the review process.*

**4.44** Appendix C of the *Guide* indicates that at the discretion of the Project Manager, the proponent must take some or all of the following steps:

- communicate with affected elected officials and other key stakeholders;
- notify, in writing, potentially-affected area residents;
- make copies of the registration document available to the public, stakeholders, etc and file one or more copies at the nearest DENV regional office;
- place public notices in a locally-available newspaper; and
- advertize and host open houses, information sessions and/or public meetings.

**4.45** If not already included in the EIA registration document, within sixty days of project registration the proponent must prepare and submit a report to the branch documenting the public involvement

activities that have been carried out, the comments received, and proponent responses to those comments.

**4.46** Information on the DENV website for each registered project includes the name of the EIA Project Manager. Interested stakeholders can contact the Project Manager for more information about a given project or to provide their comments. Documents accumulated pursuant to the review are not on-line, but may be reviewed at DENV offices in Fredericton. As part of the public involvement process, proponents are required to make copies of their project registration document available publicly.

**4.47** During a comprehensive review, the public has a number of opportunities to provide input to the review process. These include:

- prior to finalization of the DENV comprehensive EIA Guidelines there is a minimum 30 day public input period;
- as part of proponent-driven consultation initiatives (e.g. open houses) held during the EIA study as required of the proponent by the Final EIA Guidelines;
- during a required formal public meeting to discuss the final EIA report prepared by the proponent that occurs no sooner than one month after the release of the final report;
- in writing for the fifteen day period immediately after that meeting; and
- during formal public meetings chaired by an independent panel that are now held routinely for comprehensive EIAs after the final report is released.

**4.48** Further, during a comprehensive review, public consultation on the Terms of Reference, while not required by the Regulation, has become standard practice.

**4.49** Proponents are also encouraged to establish liaison committees to facilitate ongoing dialogue with the public and stakeholders, although this is not a requirement at present. Branch representatives also indicated that the Department is represented at all public meetings held as part of a comprehensive EIA to observe the public involvement process.

***Our observations on public consultation***

**4.50** Based on DENV website information from 20 July 2007, fully 97.3% of registered projects never go beyond the determination review phase. The EIA Regulation does not require any public consultation during a determination review phase. However, as a result of administrative policy changes introduced in 2004, the branch now requires proponents to undertake such consultation. The Registration Guide includes the statement:

*... a decision on the project's Certificate of Determination will not be issued until the public involvement program has been completed and the documentation has been received, reviewed and approved by the Department.*

**4.51** Public consultation during the determination review phase is handled entirely by the proponent. The form that it takes varies from project to project. For example, of the 12 determination review files we examined, three proponents held public meetings, three more held public information sessions, and the other six relied solely on other means to satisfy the requirement for public consultation.

**4.52** We acknowledge that the current level of public consultation on determination reviews is a substantial improvement over what existed prior to 2004. However, there are two risks associated with the use of a proponent-driven approach to public consultation for determination reviews.

- 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.

**4.53** Related to the first risk is the risk that the proponent will shut out certain individuals or organizations with which they have had disagreements in the past. For example, in one of our sample files, we noted that a proponent-formed community liaison group excluded certain stakeholder groups suggested by the branch.

**4.54** One stakeholder commented that, "*the Minister, not the proponent, should control public consultation.*" They also indicated that information sessions are not useful as a means for getting public input, but appear to be preferred by proponents over full public meetings.

**4.55** As part of our sample testing procedures, we evaluated the adequacy of public consultation held for each of our sample items. We found it to be adequate for all three comprehensive reviews we tested and nine of the twelve determination reviews. In our opinion, public consultation for the other three determination reviews (i.e. 25% of our sample) could have been improved.

- One of the determination reviews was registered prior to the 2004 change in administrative rules, and therefore did not require the current required level of public consultation to be demonstrated by the proponent.
- Public consultation on a second file was limited to letters to adjacent landowners and one stakeholder group. There were no public meetings or information sessions. Further, because of the late notification of the public (i.e. TRC review was already well under way) very little time was given for public responses.
- Notification in a third file was also limited. For that file, the proponent published notice in a provincially-distributed newspaper three times, but did not hold public meetings or information sessions. We felt this approach significantly limited the public input to this project.

**4.56** In a fourth case, while public consultation was generally adequate, we did note that the date for the public meeting was moved up a week shortly before it took place. One stakeholder requested that the proponent delay the meeting in order to allow him to properly prepare for the meeting, but that request was denied by the proponent.

**4.57** *Minimum Proponent Sponsored Public Involvement Standards for Registered Projects* are detailed in the PAB's *Registration Guide, Appendix C*. *Appendix C* also establishes potential additional public consultation requirements in specific circumstances including the following:

*For large scale projects, and projects in sensitive environmental settings, the following additional requirements may be required at the discretion of the Project Manager; Project Assessment and Approvals Branch. ... 7. The proponent shall advertise and host an open house or public meeting as an opportunity for the public to become familiar with the proposed project and ask questions and/or raise concerns pertinent to the environmental impacts.*



**4.58** Therefore, the onus is on the branch (i.e. the involved Project Manager) to identify those cases where public meetings are required, creating a risk that such meetings will not be held when they would add value to the public consultation process.

**4.59** We believe that 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 would put the onus on proponents to ask for exemption from this requirement, rather than relying on the branch to ensure that public meetings are held where warranted.

**4.60** We would note that some proponents seem to have held public meetings for projects regardless of the fact that they were not required under the current test of “large scale projects, and projects in sensitive environmental settings”. However, the risk that such meetings will not be held when they would be of value exists with the current guidelines.

**4.61** The public consultation process for the three comprehensive EIAs we tested functioned much as documented earlier in this section of the chapter. Consequently, we have no reportable concerns with that part of the process.

***Project Assessment and Approvals Branch attendance at public meetings***

**4.62** The Project Assessment and Approvals Branch assesses the extent to which its guidelines have been met in evaluating adequacy of public consultation based on documentary evidence it obtains. However, Project Managers typically do not attend public information sessions or meetings held by the proponent during the determination review phase, relying on the consultation report prepared by the proponent for information. This means they are reliant on proponent public consultation reporting for 97.3% of registered projects. As previously noted, Project Managers do attend public meetings held for comprehensive reviews.

**4.63** Environmental stakeholder groups we talked to expressed concerns about branch reliance on proponent reporting of results and concerns expressed by the public at determination review phase meetings. We agree that there is a risk that proponent reporting may not be entirely accurate and complete in all cases. Note that the final proponent public consultation report is made available for public review through the proponent and DENV.

**4.64** We believe that there would be significant benefits in having a branch representative attend public meetings and information sessions at the determination review stage, provided they act as neutral

observers in connection with the proposed project under discussion. Specifically:

- the branch representative would be better able to assess the degree to which public consultation guidelines were being met by the proponent;
- the branch representative would have the opportunity to learn more specific details about a project beyond those included in the registration document and responses to queries from the TRC;
- the branch representative would be better able to assess the levels of public and stakeholder concern, opposition and/or support for the project and provide this information to decision-makers at the earliest possible point in the review process; and
- the branch representative would have the opportunity, as a neutral observer, to clarify specific details associated with the determination review process with both proponent and public attendees at the meeting.

***Conclusion and recommendations – proponent and public input***

**4.65** We found that the documented process for getting proponent input was adequate, and followed consistently in every case we tested. Consequently, in our opinion the registration and review process as currently established facilitates obtaining all necessary input from proponents.

**4.66** We found that the current process followed for getting public input needs improvement, and therefore made the following recommendations.

***Recommendation***

**4.67** We recommended **Appendix C of the Registration guide be amended to require public meetings to be held during the determination review phase for every registered project unless the proponent is able to provide evidence to the branch that such a meeting would not add value to the public consultation process.**

***Departmental response***

**4.68** *Appendix C of the Registration guide identifies what is required of proponents during the determination review process. It is the position of the Department that public meetings may not be warranted for every project. Projects vary greatly in the potential impact on the environment, level of interest to the public, etc. The Department feels that it is best positioned to determine the level of public engagement. However, the Department is committed to*

*establishing criteria relating to the requirement of a public meeting during the determination review phase.*

***Recommendation***

**4.69** We further recommended a representative of the branch should attend each public meeting held during the determination review phase of a proposed project.

***Departmental response***

**4.70** *The Department agrees in principle, but is best positioned to determine when a staff member should attend such meetings. Also, it should be reiterated that the Department would be taking an objective, neutral role at such meetings and be primarily responsible for clarifying the EIA process only. The Department has, and will continue to host public meetings specifically geared to explain the EIA process in areas where major projects are proposed.*

**Information to  
decision-makers**

***Section introduction***

**4.71** As discussed in the previous section, much critical information flows from the proponent and the public. However, it is the role of the Technical Review Committee, led by the Project Manager who chairs the TRC, to review and analyze that information in order to identify key issues and present them in an understandable way to decision-makers.

***Technical Review Committee  
– composition and work***

**4.72** The Technical Review Committee (TRC) must include members from all areas upon which the project may have an impact, and therefore must represent all potential environmental risk areas associated with the proposed project. The Project Assessment and Approvals Branch maintains and regularly updates a listing of key review agencies and contacts to ensure the EIA Project Managers consider the full range of potential experts when selecting a TRC. Project reviews are typically broadly scoped to ensure that all departments and agencies are represented. Should new areas be identified during an EIA review, TRC members are added to the review team as required. Further, the branch is permitted to retain outside expertise if sufficient expertise is not available within the TRC to handle a determination or comprehensive review.

**4.73** In our sample of project files, there were an average of slightly more than eleven TRC members on each determination review, and an average of over thirty-six members on each comprehensive review. We noted both the use of the listing of key review agencies and contacts, and the addition of further TRC members part way through some reviews where considered necessary.

**4.74** We also observed that the composition of TRCs routinely covers all areas of significant environmental risk as identified in

proponent registration documents, by Project Managers, and by TRC members during the review. Further, TRC members do not act alone on behalf of the organizations and branches they represent. The role of TRC members includes acting as conduits for comments and questions from their own departments and agencies. Each TRC member typically circulates documents within their own department or agency in order to canvas opinions and feedback relating to the impact of the proposed project on their organization's mandate. Consequently for example, an eleven-member TRC typically means that many more experts are actually involved in the review of a project.

**4.75** From our review of the fifteen sets of project files, it is our impression that TRC members are very diligent in reviewing the potential impacts of projects, asking questions to proponents, and suggesting changes and/or mitigation that should be included in approval conditions.

**4.76** One branch manager pointed out that a great strength of the process is that with so many different players, all with their own areas of expertise and interest, it would be difficult for politics to enter decision-making to any great extent. If the opinions of TRC members were routinely ignored, or if they felt that the breadth and depth of analysis was not sufficient, various departments and agencies would pull out of the process. The manager concluded by stating that this has never happened.

***Stakeholder representation  
on Technical Review  
Committees***

**4.77** The branch casts the net widely in ensuring that all government perspectives are represented on the TRC. All potentially-impacted departments and agencies are invited to participate, along with various federal and municipal representatives. However, no stakeholders, either business or environmental, or other representatives of the public are invited to serve on TRCs.

**4.78** Branch representatives indicated that they limit TRC appointments to government employees who represent organizations with a mandate in their specific area of expertise. They exclude non-governmental individuals and organizations that simply have an interest in the potential environmental impacts of the project. The branch noted that should such stakeholders be represented on the TRC, there is a significant risk that they might try to derail the process to serve their own interests. Under the current process, these stakeholders may provide input through whatever public consultation process is established for a specific project. This again highlights our belief that it is critically important that the processes for obtaining proponent and public input be functioning effectively, and efficiently.

***Process for providing information to decision-makers***

**4.79** Ultimately, the branch is responsible for providing the Minister, and where required the Lieutenant-Governor in Council, with complete and accurate information about the environmental risks and benefits associated with proposed projects, along with pertinent recommendations. So, while the branch does not make decisions, its work greatly influences both the approval of projects and the conditions attached to those approvals.

**4.80** The key risks associated with a failure to provide sufficient, accurate information to decision-makers are:

- the risk that a project is approved without sufficient conditions to avoid, mitigate, or adequately compensate for adverse environmental impacts;
- the risk that a project is not approved when it should have been; and
- the risk that certain conditions of determination are ineffective in reducing the potential adverse environmental impacts to which they are targeted.

**4.81** At the conclusion of each environmental assessment, branch staff provides the Minister, and later the Cabinet as required, with a briefing memo in a standard format describing the project, the composition of the TRC, and the key issues raised during the review. Conditions of approval intended to address those key issues along with rationale for recommending those conditions are also included.

**4.82** In addition to the briefing memo, branch staff is required to provide periodic supplemental briefings during the review process for key projects on a case by case basis as requested by the Minister. Such briefing notes are filed electronically for the Minister's review and reference.

**4.83** In our test files, we observed that a standard process was followed and documents prepared for ministerial consideration were presented consistently from file to file. Further, they appeared to cover all significant areas of concern as discussed during the review process.

**4.84** All of the certificates of determination and EIA approvals issued for our sample files had multiple conditions attached to them. On average the EIA approvals had approximately eighteen conditions. The certificates of determination had an average of about eleven conditions.

***Unforeseen environmental impacts after approval***

**4.85** Despite the best efforts of the branch and the TRC, there is always a risk that new information will come to light calling into question a previous decision made to approve a project. For example, a previously-approved project could actually be having a significant negative impact on the environment despite proponent compliance with existing conditions of approval and other commitments. Failure to address such cases can result in a loss of stakeholder confidence in the integrity of the assessment process. Such cases may be identified by the branch, for example, through monitoring activities. The branch has several means through which to deal with such situations.

- The EIA Regulation states that approvals issued through comprehensive EIAs can be revoked or suspended if material facts are not disclosed or inaccurate information is submitted by the proponent.
- Certificates of Determination contain a “sunset clause” which renders a certificate invalid (unless stated otherwise by the Minister) if the project has not commenced within 3 years. This reduces the risk of projects proceeding on the basis of obsolete technology and/or in absence of the most recent environmental information.
- Conditions attached to the Certificate of Determination may contain monitoring requirements and may specify actions that must be taken in the event that undesirable outcomes are identified.
- If an environmental Approval to Operate was issued in relation to a project, then unanticipated impacts can be addressed when the Approval comes up for renewal.

**4.86** With these tools, it appears that the branch should be able to address situations in cases where new information comes to light calling into question a previous decision made to allow a project to proceed.

***Availability of research for Technical Review Committee reference***

**4.87** In many cases, research studies relating to the potential impact of a proposed project on the environment are consulted by the TRC in assessing those impacts and in setting conditions of approval for the project. However, in some cases pertinent research has not been completed. Proponent-contracted environmental consultants we talked to indicated that this can lead to such things as:

- inconsistency in conditions of approval;

- proponents having to pay for research because it has never been done before;
- incorrect assumptions being made by TRC members about impacts of proposed projects; and generally
- a perception among proponents that when it comes to environmental assessments, government makes it up as they go along.

**4.88** In fact, the branch indicated that it is willing to accept that the first two bullet points may occur at times. For example, the branch stated that standards are adopted where needed, but where no New Brunswick standards exist, they do adopt standards from other jurisdictions as applicable. They also noted that EIA review results, including new research, have been the impetus for the development of new standards and policies that are subsequently applied in future reviews. This may be viewed as inconsistency. The branch views it as applying the most up-to-date scientific knowledge to its decision-making.

**4.89** Further, the branch indicated that the New Brunswick approach to environmental assessment is based on the philosophy that the proponent, and not the public, should bear the costs of determining the likely environmental impacts from their project. It is fully expected that proponents would have to pay for research in order to obtain an approval if their project is the first to potentially affect the environment in a particular area or way. However this typically only occurs when a proponent's project will have some unknown and potentially significant environmental impact. In these cases, the burden of proof is on the project proponent to adequately characterize the extent and significance of a given impact (e.g. to a wetland, flora and fauna), and to determine if the impact is avoidable, can be mitigated in some way, or if compensation for the impact is required.

***Conclusions— information to decision-makers***

**4.90** Based upon our testing and discussions with branch representatives, the EIA process appears to provide decision-makers with complete and accurate information about the environmental risks and benefits associated with proposed projects, along with pertinent recommendations.

**Transparency of decision-making**  
*Section introduction*

**4.91** Because the environmental impact assessment process is intended, under the Regulation, to be public in nature, it is important that it be as transparent as possible. Any lack of transparency, whether real or perceived, may result in the following consequences:

- Proponents perceiving that they are being treated unfairly (i.e. that government is anti-business).
- The public or specific stakeholder groups perceiving that the government is biased against their concerns and/or towards development / business.

**4.92** This can lead to a loss of support for and confidence in the assessment process, resulting in a breakdown in the integrity of the process as participation is reduced.

***What Project Assessment and Approvals Branch does to ensure transparency***

**4.93** As previously mentioned, the DENV website lists all projects currently under environmental assessment, and shows their progress (by milestones). A Project Assessment and Approvals Branch representative indicated that website information is updated on a weekly basis. Information included on-line for determination reviews includes:

- a branch-assigned project number;
- the name of the proponent;
- a description of the project;
- the New Brunswick county in which the project is located;
- the date the project was registered;
- the assigned branch Project Manager;
- the date of the decision, if one has been made; and
- the conditions associated with the certificate of determination if one has been issued.

**4.94** For comprehensive reviews, documents are also provided on-line (i.e. as available depending upon the stage of the review) including:

- draft guidelines;
- final guidelines;
- a DENV-prepared summary of the EIA report;



- a general review statement;
- a public meeting notice;
- a summary of public participation; and
- a list of conditions of approval.

**4.95** News releases are often used to inform the public about the status of comprehensive reviews as well. The branch also holds post-report panel reviews for each comprehensive EIA review to allow for more scrutiny of decision-making in a public forum.

**4.96** Other documents accumulated pursuant to a review are not available on-line. However, all documents produced pursuant to a review are considered public, and may be reviewed at DENV offices in Fredericton.

**4.97** We would note, however, that despite all the useful information presented on the DENV website, we found no clear rationale on a project by project basis for why EIA approvals or certificates of determination were issued. Further, no explanation was provided as to how major issues identified during the review had been addressed. Such information is captured by the branch and presented to the Minister in the form of a briefing memo as described in a previous section of this chapter. We feel that public disclosure of this information through the DENV website would help stakeholders better understand the decisions reached for particular projects.

***Stakeholder concerns with transparency and decision-making***

**4.98** In our discussions with stakeholder groups, concern was raised about the low number of denials of approval as a percentage of total registrations. We discussed this issue with branch representatives. They indicated that it is not their intention to routinely issue denials for proposed projects. A review of the on-line registered projects shows that, in fact, very few have proceeded through a full review and been denied by the Province. As can be seen in exhibit 4.1 of this chapter, there were only two denials of approval among the 111 complete reviews shown on the DENV website on 20 July 2007.

**4.99** However, branch representatives indicated that they do attempt to keep proponents informed of the likely changes and conditions that will be imposed on their projects in order to make them environmentally acceptable. Consequently, a number of proposed projects that may ultimately be denied by DENV are cancelled due to a lack of proponent response, or withdrawn by proponents before they

reach the decision-making stage. Abandoning certain projects allows the proponent to cut their losses relating to registered projects that may not be economically feasible given the costs that would be associated with making them environmentally acceptable to the Province. Including such projects does significantly lower the percentage of registered projects that eventually get approved by the Province. Exhibit 4.1 shows that 18 of the 111 completed projects on the DENV website at 20 July 2007 (i.e. 16.2%) were either denied approval, cancelled, or withdrawn by the proponent.

**4.100** More generally, it appears that the expectations of members of the public and specific stakeholder groups do not always line up with departmental goals and objectives for the process, leading to dissatisfaction. For example, some stakeholders perceived decision-making in connection with EIA as primarily supporting development, although we found no evidence of that in fact. We believe that the continued public outreach work of the branch, combined with the public information contained in reports like this one, and adoption of our related recommendations will improve both the perception and reality of fairness in decision-making. However, we would caution that it is an area that needs constant attention from the branch and the Department.

***Conclusion and recommendation – transparency of decision-making***

**4.101** Based upon our audit work in the area, we feel that, in general, decision-making associated with the EIA process is transparent. However, we were unable to find clear documented, readily-accessible explanations supporting DENV decisions that would allow the public to understand the rationale for decisions made. For that reason, we made the following recommendation.

***Recommendation***

**4.102** We recommended the DENV website provide, on a project by project basis, a rationale for certificates of determination and EIA approvals issued and explanations as to how major concerns raised by the proponent and/or stakeholders during the review process have been addressed.

***Departmental response***

**4.103** *The conditions that are currently posted on the website essentially do summarize the rationale for certificates of determination and EIA approvals. These conditions are the result of the EIA process and are intended to ensure that there will be no significant unmitigated environmental impacts (i.e., the lack of such impacts, or the appropriate mitigation of them, is ultimately the rationale for allowing the project to move forward). Therefore, the Department does not consider it necessary to provide additional rationale for certificates of determination and EIA approvals. Additional information beyond that*

*which is provided on the website can currently be obtained under provisions of the Right to Information Act. Furthermore, if the Department were required to fulfill this recommendation, additional resources would be needed.*

## **Reasonableness of time and effort**

### ***Section introduction***

**4.104** There are two risks associated with the time and effort put into a review by the Project Assessment and Approvals Branch, Technical Review Committee (TRC), and government.

- The risk that too much time and too many resources are put into assessing a project when compared with potential significant environmental impacts associated with that project. This could result in government resources being wasted on insignificant work. It could also result in the project being unduly delayed, potentially leading to additional costs or loss of revenues to the proponent.
- The risk that not enough time and resources are put into assessing a project. This could result in certificates of determination or EIA approvals being issued that lack sufficient conditions to address all potential significant environmental effects.

### ***Project Assessment and Approvals Branch process to ensure reasonableness of time and effort***

**4.105** The branch informed us that each Project Manager has the ability to scope the project to ensure that review effort is focused on the key issues. So if there are relatively fewer identified risks (i.e. potential areas of environmental impact), the scope would be much narrower. This is also reflected in the composition and number of members on the TRC, which is also controlled by the Project Manager.

### ***Observations from our work***

**4.106** In our discussions with proponents and stakeholders, the following complaints were typical:

- proponents felt that too much time is spent on reviews, thereby delaying their projects; and
- environmental stakeholders felt that too little time is spent on reviews (i.e. that they are rushed to meet the needs of developers), and that not enough time is allowed for public comment.

**4.107** We looked at the amount of time that appeared to be devoted to files among our sample items. We did not note any cases in our test files where it appeared that insignificant or unnecessary work was done by the TRC. Nor did we note any cases where significant issues appeared to have been ignored.

***Conclusion – reasonableness of time and effort***

**4.108** Based upon our file review, we feel that time and effort spent on reviewing specific project proposals is reasonable when compared with the complexity and potential environmental impacts of those proposals. We saw no evidence that too much time was being spent on insignificant files or too little on complex ones.

**Timeliness of assessments**

***Section introduction***

**4.109** If the branch does not complete its review efficiently, leading to the project being unduly delayed, there is a significant potential for additional costs or loss of revenues to the proponent. Longer term, it could also lead to a loss of support for and confidence in the assessment process.

***PAB process to ensure timeliness of assessments***

**4.110** Branch representatives identified the following policies and processes in place to ensure that reviews are completed on a timely basis.

1. The branch Project Manager uses his professional judgement in deciding on the scope of the project, thereby ensuring that the review effort is focused exclusively on areas of significant environmental risk.
2. The branch Project Manager encourages proponents to respond promptly to information requests.
3. Branch administrative changes made in 2004 included the following methods of increasing the quality of the registration document, thereby expediting the review by the TRC:
  - Provision for pre-submission consultation between proponents and TRC members in advance of formal registration. The branch noted that review times can be significantly affected by proponents. For example, proponents need to ensure that their planning horizon includes sufficient time to allow required field work to be completed during the appropriate season.
  - An improved registration guide.
  - New sector specific guidelines.
4. Memoranda of Understanding were signed in 2004 between DENV and the various TRC member-departments and agencies to encourage timely, concise and useful comments from TRC members. The need to comply with those memoranda is discussed with new TRC members as they are appointed.

**4.111** The branch indicated that they work towards facilitating an initial decision by the Minister within a 90 to 120 day time frame from the date of registration. A late 2005 branch analysis indicated the average review time was reduced for the determination review phase from approximately 203 days (for files registered between November 2003 and November 2004) to approximately 108 days (for files registered between November 2004 and 2005) as a result of the administrative changes adopted in late 2004. The analysis also indicated that 29.6% of total time taken was used by the proponent, and that when files exceeded targeted timings under the new administrative processes it was primarily because of slow proponent response to TRC requests for additional information.

**4.112** In the analysis, the branch also noted:

*...to date, the Department has been able to meet or do better than the 120 day target time to Determination for those projects for which the proponent responds promptly to requests for additional information. It should be noted that this success has come during a year when the total number of registrations is low relative to previous years. A challenge will be to maintain this level of performance as the number of registrations increases.*

**4.113** We did not attempt to audit any of the information included in the analysis.

### ***Our findings and observations***

**4.114** As previously mentioned, we tested a total of twelve projects for which a Certificate of Determination was issued. Total time taken (i.e. days from the date of registration to the date of issuance of the Certificate of Determination) ranged from 48 days to 274 days. Average time taken per project was 193.5 days, significantly higher than the average shown in the branch analysis. Note that for some reviews, days include statutory holidays and summer/Christmas periods when vacations are typically taken. As with the branch analysis, we found that when project reviews took an excessive amount of time to complete, it was typically because of delays on the part of the proponent. Exhibit 4.3 provides a breakdown of the average time taken for the twelve projects.

Exhibit 4.3 – Average Time Taken for Determination Reviews

Part of review process	Days taken	Percentage of total
TRC review of proponent documents, and preparation of queries.	60.0	31.0%
Proponent response to TRC queries	73.5	38.0%
TRC review of proponent responses to final set of queries and preparation of recommendation to Minister	43.2	22.3%
Minister's decision (i.e. issue Certificate of Determination or require full EIA)	11.4	5.9%
Project Manager general administrative time	5.4	2.8%
<b>Total</b>	<b>193.5</b>	<b>100.0%</b>

**4.115** For the three comprehensive EIAs we reviewed, times taken for the comprehensive review phase ranged from 965 days to 1,667 days (i.e. 2.6 years to 4.6 years). Because of the number of additional steps involved in a comprehensive EIA, and the relatively higher complexity of the projects, it takes much longer to complete these reviews.

**4.116** The determination review phase for the two comprehensive EIAs we reviewed that required them averaged 179 days, which is comparable to the time taken for projects for which a Certificate of Determination was issued as shown in Exhibit 4.3 above. We would also note that it is not possible to present an accurate breakdown of time taken by particular parts of the comprehensive review process given that there is typically considerable overlap of activities during the process.

**4.117** We discussed the timeliness of EIA reviews with proponent-contracted environmental consultants. They noted two examples where times associated with EIA reviews were an issue.

- In one case, the anticipated time required to go through an EIA for a small scale project led the proponent to cancel the planned project and go with an alternative. The involved consultant felt that the alternative chosen was actually of more risk to the environment. However, it did not require an environmental assessment because it used an existing structure. This allowed the proponent to proceed with the chosen alternative on a more timely basis.
- In a second case, a provincial environmental assessment of a proposed mining operation took eighteen months. That resulted in a loss of business revenues because the proponent could not get to market in time to take advantage of high world commodity prices.

**4.118** The second case in particular demonstrates the trade-offs inherent in having a properly-functioning EIA process in the Province. And, while we sympathize with the affected proponent, we also believe that the EIA process is now a firmly-entrenched part of doing business in New Brunswick and must be taken into account by proponents when planning a project.

***Federal/Provincial  
coordination***

**4.119** Environmental assessment at the federal level is mandated by the *Canadian Environmental Assessment Act*. The *Act* is administered by the Canadian Environmental Assessment Agency (CEAA). The CEAA website indicates the following.

*The federal environmental assessment process is applied whenever a federal authority has a specified decision-making responsibility in relation to a project, also known as a “trigger” for an environmental assessment.*

*Specifically, it is when a federal authority:*

- *proposes a project*
- *provides financial assistance to a proponent to enable a project to be carried out*
- *sells, leases, or otherwise transfers control or administration of federal land to enable a project to be carried out*
- *provides a licence, permit or an approval ... that enables a project to be carried out*

*In the context of the Act, the term federal authority refers to a federal body (e.g., a department or agency) that may have expertise or a mandate relevant to a proposed project.*

*Ministers, departments, departmental corporations and agencies of the Government of Canada are federal authorities. Other bodies created by statute and accountable through a minister to Parliament can also act as a federal authority.*

**4.120** The federal self assessment process is significantly different from the process used in New Brunswick and other jurisdictions. It involves self-assessment where federal departments are called upon to

head up reviews under the federal process. The CEAA does not assume a coordination role despite its responsibility for administering the Act.

**4.121** There are risks inherent in having two levels of government with separate environmental assessment processes looking at the same project. Specifically:

- the risk that efforts will be duplicated leading to an overall waste of public resources;
- the risk that mixed messages are sent to a proponent, the public and other stakeholders where the decisions and/or conditions of approval of the two levels of government are not aligned; and
- the risk that projects will be delayed due to poor coordination between the two levels of government.

**4.122** Branch representatives indicated that the Department addresses these risks on the provincial side through the following processes.

- For most projects (i.e. Determination Reviews and the equivalent federal screenings) the proponent can submit to the Project Assessment and Approvals Branch as a one window access to both levels of government using the same documentation. In such cases the federal review is integrated seamlessly into the provincial process.
- For most projects (i.e. Determination reviews and federal screenings) federal agencies provide their comments via the provincial process as members of the provincial TRC.
- The provincial *Registration Guide and Sector Guidelines* have been reviewed by the relevant federal agencies to ensure that federal requirements and concerns are addressed through the provincial process.
- The CEAA, along with other federal agencies seen as having expertise or regulatory responsibility in relation to a given project, is sent copies of all provincial project registrations. (Also, all federal projects are circulated to DENV through the federal coordination regulation process.)
- DENV is represented on a national committee of provincial and territorial environmental assessment administrators along with



CEAA. Among other things, this committee's mandate is to foster harmonization between federal and provincial EIAs.

**4.123** However, the Department also indicated that federal/provincial coordination for projects requiring comprehensive reviews still needs work. DENV feels that all environmental impact assessments should be managed such that there is only one review for every project, with one decision being made by the jurisdiction best placed to do so. The Council of the Federation (i.e. the provincial premiers) has mandated the Canadian Council of Ministers of the Environment to resolve existing coordination issues. The Department continues to work with its federal counterparts to advance its "single review/single decision" vision.

*Conclusion – timeliness of assessments*

**4.124** Based upon our testing and other audit work completed, we would conclude that the branch does ensure that all aspects of environmental assessment within its control are completed efficiently and without undue delays, given the number of provincial, federal and municipal agencies that are typically involved in reviews.

**Monitoring of proponent compliance**  
*Section introduction*

**4.125** In order to comply with the Certificate of Determination or EIA approval for a project, the proponent must satisfy any associated conditions. The proponent must also follow through on any other performance promises made in registration and other documents.

**4.126** Many proponents will comply voluntarily with these commitments as a matter of course. However, some may not, due to differences in interpretation or the inducement of the economic and competitive advantage they may derive by not complying. For that reason, monitoring and, where necessary, enforcement activities to ensure proponent compliance are critical aspects of the environmental assessment process. Otherwise a significant portion of the work done by DENV and TRC members may have no real impact, leading to continued risk of significant negative environmental impacts occurring, even though a project has been reviewed by DENV.

*Project Assessment and Approvals Branch monitoring process*

**4.127** A Project Assessment and Approvals Branch representative indicated that the branch takes the following steps pursuant to its monitoring responsibilities.

- Proponents are required to submit regular reports on the status of conditions attached to their certificate of determination or EIA approval. These reports are typically required every six months until all conditions have been addressed.

- For larger, more complex projects, proponents are required to submit searchable databases of all commitments made in the registration document and in subsequent correspondence submitted during the EIA review.
- The branch has designated project specific follow up and may require proponents to fund on-site compliance officers who report directly to the branch for larger projects to ensure that commitments and conditions are complied with.
- A Project Manager in the branch has been assigned responsibility for reviewing monitoring information provided by proponents for reasonableness and following up with the original assigned Project Manager where warranted.

***Our findings and observations***  
*Proponent compliance reporting*

**4.128** Starting in 2004, the branch began including a standard condition for all Certificates of Determination requiring proponents to report periodically on their compliance with those associated conditions. Of the twelve determination reviews we examined, nine required a summary compliance table be provided by the proponent every six months, and two required such a table be provided every twelve months. The condition was not included for the twelfth file because that project had been registered before the 2004 changes were made.

**4.129** Under approval conditions for all three comprehensive EIAs we examined, the proponents were required to set up a tracking database to monitor compliance with all material, permit, and approval conditions and commitments made during the regulatory review process. In each case, the database was to be updated monthly.

**4.130** Further, for one of the projects the TRC was involved in giving the proponent feedback on the form and content of the tracking database while it was being developed. The proponent in that case was also required to fund the salary of a project-specific compliance officer who is to report directly to the branch on the status of the project. The other two projects that were subject to comprehensive EIAs had not yet been implemented at the time of our examination, so we were unable to confirm final monitoring arrangements for those projects.

*Project Assessment and Approvals Branch follow up on delinquent proponent reporting*

**4.131** The branch has established processes that should allow it to obtain sufficient information for monitoring purposes. However, when proponents fail to provide required reporting within established time frames, the branch does not always follow up on a timely basis.

**4.132** For the 12 determination review files we tested, we found the following:

- All required summary compliance tables for four projects had been received by the branch.
- Not all required summary compliance tables had been received by the branch for two projects, but follow up letters had been sent to related proponents.
- Not all required summary compliance tables had been received by PAB for two projects, and no follow up letters had been sent.
- Summary tables for three recently-approved projects were not yet due.
- A summary table was not required for the one project registered prior to 2004.

**4.133** There was also evidence on file that some of the compliant proponents had provided required reporting well after reporting deadlines. Reporting for the one comprehensive EIA project that was active appeared to be up to date, and included supporting documents provided in hardcopy to the branch.

**4.134** A branch representative informed us that they often do more follow up on delinquent proponent reporting during the summer months when extra staff resources (i.e. summer students) are available.

*Project Assessment and Approvals Branch review of proponent compliance reporting*

**4.135** Once proponent reporting has been received, it is important that data be reviewed and verified to ensure it provides an accurate picture of proponent compliance. According to a branch representative, monitoring steps taken by the branch include:

- attempt to get verifiable information from proponents (i.e. as described above);
- review information provided for reasonableness;
- canvas opinion of original Project Manager as to the degree to which proponent-reported status meets the original intent of a condition;
- ask regional inspectors to do a site visit if they have concerns about potential non-compliance by the proponent;

- evaluate and approve an Environmental Protection Plan or Environmental Management Plan if included as a condition; and
- rely on public complaints and regional inspectors to identify any other problems

**4.136** These monitoring procedures continue until a project is complete or the branch is satisfied that all conditions have been met.

*Consistency of the monitoring process*

**4.137** In general, we found the level of monitoring activity to be inconsistent from file to file. The following six separate examples, taken together, demonstrate that inconsistency.

- A proponent submitted the summary table required under conditions of their certificate of determination about 1 ½ months late. There were a couple of conditions that had not been complied with and no indication on file as to whether the Project Manager followed up on this apparent non-compliance.
- A second proponent submitted three semi-annual summary tables required under conditions of their certificate of determination on a timely basis. The branch obtained evidence from another branch of DENV confirming proponent-reported compliance with one of the conditions.
- A third proponent whose certificate of determination was dated 15 December 2005 has never provided the required summary tables to the branch, although the proponent had provided a wetlands compensation plan that was reviewed by the Department as required in their conditions. However, many of the other conditions attached to the certificate of determination had time deadlines that had passed by the time of our examination. We did note that the branch had sent a letter in June 2007 requesting the proponent provide required reporting, although it was the first such follow up letter.
- The first summary table due from a fourth proponent was received late, and only after a follow up letter was sent by the branch. The second table was received on time, and triggered a follow-up question by the branch that was subsequently answered by the proponent.
- As a result of a complaint from a tourist, the Department of Tourism and Parks discovered a significant case of non-compliance with project conditions of approval on the part of a fifth proponent.

That department notified DENV who commenced an investigation and were in the process of taking enforcement action against the proponent at the time of our work. However, Project Assessment and Approvals Branch monitoring activities had failed to identify this significant failure to comply by a proponent.

- The one active comprehensive EIA file we examined has a compliance officer who reports directly to the branch. However, we found no clearly documented evidence of how information provided by the compliance officer impacts on the monitoring activities carried out by the branch for that project.

**4.138** We also noted that the branch does not audit or otherwise attempt to verify information provided by proponents. For example, they do not confirm the veracity of permit numbers reported by the proponent with issuing departments. Also, some stakeholders we talked to expressed concern about a perceived lack of field visits by DENV staff for monitoring purposes.

**4.139** DENV representatives acknowledged that ensuring that sufficient monitoring has been completed is an ongoing challenge. They do what they have time for. However, they do not have a formal monitoring process, unlike many other branches in DENV. This is primarily because the resources are not currently available to develop, implement, and maintain such a process. A representative of the branch also indicated that they may lack the necessary expertise in monitoring. We believe that the current situation has resulted in the lack of consistency discussed above, and that the lack of consistency creates significant risks.

*Public reporting of proponent compliance*

**4.140** There is currently no formal reporting process through the DENV website or elsewhere that would keep the public informed about the compliance status of projects reviewed by the Department. There are a few reasons why reporting of proponent compliance with their DENV-imposed conditions would be beneficial. Specifically it would:

- Improve public confidence in the environmental assessment process by clearly establishing that the branch monitors them on an ongoing basis.
- Allow the public to be knowledgeable about proponent compliance assertions. This is important given that the public is looked upon by the branch as a source of monitoring information for specific projects.

- Potentially improve proponent compliance with their project conditions of approval, given the potential for embarrassment that would occur if their non-compliance became public knowledge.

***Conclusion and recommendations – monitoring of proponent compliance***

**4.141** Based upon our testing and discussions with branch representatives, we feel that the branch sets sufficient conditions in Certificates of Determination and EIA approvals to allow it to obtain necessary compliance reporting from proponents. However, follow up on delinquent proponent reporting, public reporting of the compliance status of projects, and the review and verification of client assertions need improvement.

***Recommendation***

**4.142** We recommended DENV should develop, implement, and maintain a formal monitoring process that allows it to adequately monitor proponent compliance with conditions of Certificates of Determination and EIA 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.

***Departmental response***

**4.143** *The Department acknowledges that follow up is an ongoing challenge. One of the first steps in implementation of a formal monitoring process would have to include the development of “standards” for monitoring. The Department is committed, over the next five years, to develop a monitoring process so that follow-up on EIA projects can be more rigorously followed.*

***Recommendation***

**4.144** We also recommended DENV should present sufficient information on its website to keep the public up to date about the compliance status of projects for which Certificates of Determination or EIA approvals have been issued.

***Departmental response***

**4.145** *The Department considers the current compliance and enforcement process is satisfactory. The Department considers the information available to the public relating to EIA projects on the website to be satisfactory at this time.*

**Enforcement**  
***Section introduction***

**4.146** As mentioned in the previous section of this chapter, enforcement activities sometimes need to be carried out to ensure proponent compliance with the conditions and commitments associated with their Certificate of Determination or comprehensive EIA approval. If appropriate action is not taken where there has been non-compliance by proponents:

- the effectiveness of the Regulation as a tool for protecting the environment may be compromised;
- there may be a loss of stakeholder confidence in the environmental assessment process when they observe non-compliant proponents are not being sanctioned; and
- non-compliant proponents may gain a competitive advantage from their non-compliance.

### ***PAB enforcement process***

**4.147** DENV has a formal compliance and enforcement policy that is followed by Project Assessment and Approvals Branch in the event of non-compliance. Note that our Office looked at this policy in our 2002 Report. Under the policy, DENV addresses cases of non-compliance by applying escalating enforcement actions.

- The branch first talks to the proponent to get voluntary compliance.
- If the proponent does not comply, and the non-compliance is judged as being of low risk to the environment, the branch then sends a letter to the proponent giving them a deadline for taking action.
- If the proponent does not comply, and the non-compliance is judged as being of high risk to the environment, the branch contacts the applicable DENV regional inspector who visits the proponent in an attempt to stop the activity causing the risk.
- If non-compliance continues, the branch provides the project file to the DENV Enforcement Branch. That branch takes the lead on any resulting enforcement activity. Project Assessment and Approvals Branch staff provides support as required in the enforcement effort.

### ***Our findings and observations***

**4.148** In our testing, we encountered only one confirmed case of proponent non-compliance, as discussed in the previous section of this chapter. In that case, the proponent had not complied with the conditions included in their Certificate of Determination, but had proceeded with their planned project. This non-compliance posed a significant risk to the environment.

**4.149** The DENV Enforcement Branch has proceeded with enforcement action against the proponent with information and support provided by the Project Assessment and Approvals Branch.

**Conclusion - enforcement**

**4.150** Based upon our testing and discussions with branch representatives, we would conclude that the branch does take appropriate action in cases where it has determined that approval conditions and commitments are not being complied with by proponents.

**4.151** However, because of inadequate monitoring, there is a significant risk that cases of non-compliance will not be identified by DENV, and that no enforcement action will therefore be taken.

**Effectiveness  
Reporting****Section introduction**

**4.152** Program effectiveness reporting is valuable in that it allows both decision-makers and the public to make judgments about the effectiveness of a program in achieving its objectives. This gives decision-makers information upon which to base changes to improve program performance. It also gives the public information that may either improve their confidence in the effectiveness of the program, or upon which to base calls for change.

**4.153** Essentially, an effectiveness reporting system includes the following components:

- setting achievable, measurable performance objectives for the program;
- developing performance measures that will be used to evaluate the degree to which performance objectives have been achieved;
- developing periodic (e.g. annual) performance targets for each performance measure;
- developing systems to capture required data;
- reporting actual versus targeted results; and
- reporting explanations for variances between actual and targeted performance and taking action to improve performance where warranted.

**Our findings and  
observations**

**4.154** Anecdotal evidence from representatives of the Project Assessment and Approvals Branch and some stakeholders indicate that the EIA program is having a positive effect on the environmental impact of the projects reviewed under the Regulation.

**4.155** However, there is currently only a very limited system in place to objectively measure and report on the effectiveness of the program



in achieving its objectives. The DENV annual report of 31 March 2007 contains only operating information about the EIA such as the number of projects registered, and a listing of the most significant projects. EIA would likely have an impact on other DENV environmental measures reported in the annual report, for example those monitoring air and water quality, but determining the extent of that impact in comparison with other factors would be difficult.

**4.156** Branch representatives provided the following comment on this topic.

*Environmental impact assessment is recognized nationally, and internationally as an effective tool for environmental protection. However, owing to the project-specific nature of the process, it is recognized (in New Brunswick and in other jurisdictions) as a difficult area in which to apply typical performance management processes. DENV's approach has therefore been to assess the program on the basis of the many and diverse benefits that have accrued from each project reviewed. By way of example, the EIA process has resulted in such improvements and environmental benefits as: rerouting ship traffic in the Bay of Fundy to accommodate whale migration routes, pollution control equipment has been installed at power generating facilities; major highways have been rerouted to accommodate ecologically sensitive areas, etc.*

**4.157** We acknowledge the difficulty in attributing specific environmental outcomes to the EIA program. But despite the difficulty in developing a more formal effectiveness reporting regime for the program, we feel that there is value in doing so in that it would provide DENV with information upon which it could identify potential program improvements. It could also be used as a means of informing the public of the relative success of the EIA program.

**4.158** Consequently, we would suggest that more specifically-targeted performance measures be used as a starting point for the development of a performance reporting system. Focus could also be on such things as proponent and other stakeholder satisfaction with the EIA process (i.e. using information gathered from surveys), and estimates of negative environmental consequences avoided for specific projects as outcomes of the EIA process. Measures related to the economy and efficiency with which the branch completes requirements set by the Regulation could also be utilized.

**Conclusion and recommendation – effectiveness reporting**

**4.159** In the longer term, the performance reporting system could be enhanced over time as best practices in performance reporting are developed for environmental impact assessment.

**Recommendation**

**4.160** DENV has only a limited system in place to measure and report on the effectiveness of environmental impact assessment in achieving its objectives, and that system would be of limited use in determining areas to target in order to improve performance.

**Departmental response**

**4.161** We recommended the Project Assessment and Approvals Branch develop and implement an effectiveness reporting system for the EIA program.

**4.162** *It is difficult to quantify what environmental effects could potentially result from a project that has not been subjected to the EIA process. For each project proposal, the Department considers the “potential” environmental impact and requires the proponent to identify measures to avoid or mitigate that impact. This review is conducted on a project by project basis. The development of an effectiveness reporting system would be difficult and will likely not improve the effectiveness nor efficiency of the EIA process. However, the Department is committed to find better ways to educate the public on the EIA process and its benefits.*

**Other areas covered in our audit**  
**Risk management**

**4.163** The branch is primarily responsible for managing the risks associated with the EIA program. The potential negative consequences should they fail to adequately manage those risks include:

- significant adverse environmental impacts;
- a loss of public, stakeholder, proponent, and/or DENV staff confidence in the integrity of the EIA process; and/or
- public embarrassment for the government and DENV.

**4.164** We asked the branch to complete a matrix detailing potential risks associated with the EIA program, the means they use to manage those risks, and the potential negative outcomes that may occur if those risks are not adequately managed. Risks identified through this exercise are listed in Appendix 3 of this chapter.

**4.165** As a result of this exercise, we believe that the branch has a good understanding of the risks associated with the EIA program. In general, we feel that most identified risks are being adequately managed. However in a few areas, as discussed earlier in this chapter,

we have recommended improvements that we feel would allow the branch to better manage associated risks.

***Regulation review and update***

*Current status of the Regulation and our observations*

**4.166** It is important that the EIA Regulation be reviewed and updated periodically. This would allow DENV to ensure:

- the Regulation effectively supports current government goals and objectives associated with environmental impact assessment;
- the Regulation allows for the establishment of an effective and efficient administrative framework within which those purposes can be achieved; and
- the Regulation covers all new project areas that may have significant negative impacts on the environment.

**4.167** Based upon our review, the Regulation has only been subject to limited modifications since it was first introduced in 1987. The requirement for proponents to pay project registration fees was added in 2005, and two additional changes were made to Schedule A as discussed below.

**4.168** The branch provided the following comment relating to review and updating of the Regulation.

*Input from stakeholders, proponents and Project Assessment Section has been collected. Modification to the EIA regulation has been identified as one of the elements as the Department moves forward with modernizing its legislation.*

***Types of Projects Covered Under the Regulation***

**4.169** Schedule A of the Regulation lists the categories of projects that must be registered under the Regulation. The full list is shown in Appendix 1. The last change to Schedule A was made in 2000, and there have been only two changes since the Regulation was first introduced in 1987:

the exclusion of:

- (h)(ii) *pipelines or pipe lines that are the subject of an application under the Gas Distribution Act or the Pipe Line Act;*

and the addition of:

(m.1) *all disposal, destruction, recycling, reprocessing or storage of waste that originates outside New Brunswick and all facilities or systems for the disposal, destruction, recycling, reprocessing or storage of such waste;*

**4.170** However, during our audit we were informed that there are certain types of projects that need not be registered under the Regulation as it is currently written even though they may have significant 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). We would also note that as our review in this area was not comprehensive, there may be other types of projects excluded from Schedule A.

**4.171** We recognize that at least some of these areas are covered under separate legislation and regulations that are administered elsewhere in DENV or in other departments. However, that does not necessarily mean that they are reviewed with the same rigor that is applied to projects registered under the EIA Regulation.

**4.172** For example, the report *Public views on forest management in New Brunswick: report from a provincial survey*, indicated that fully 55.8% of respondents disagree or strongly disagree that the economic contributions of the forest industry outweigh environmental impacts. Only 24.3% of respondents agreed or strongly agreed with this statement. This appears to indicate that the public may have lost confidence in the integrity of environmental reviews of projects in that sector.

**4.173** We feel that registration under the EIA regulation should be required for all projects which may have negative environmental impacts, even where the project would be reviewed under another piece of legislation.

**4.174** This would allow the branch, as a minimum, to:

- ensure consistent review standards are maintained;
- provide a single entry point for proponents;
- ensure consistent treatment of all proponents, regardless of the type of undertaking they are proposing (i.e. a potential significant negative environmental impact that must be avoided or mitigated for one type of project should be avoided or mitigated for all;

stakeholders we talked to indicated that this may not be the case at present); and

- provide proponents whose projects are currently not covered by the Regulation with the benefits associated with an EIA.

**4.175** In fact, adopting a comprehensive registration requirement under the EIA Regulation may not require much additional work for the branch if it is comfortable with the review process followed pursuant to another piece of legislation.

**4.176** There may also be certain types of projects currently listed in the Regulation that may not have a significant impact on the environment, and therefore could be excluded from Schedule A. However, the rationale for excluding those project types should be documented so that the decision can be revisited periodically.

***Recommendations –  
Regulation review and update***

**4.177** We recommended DENV complete its review of the EIA Regulation and make necessary modifications to the Regulation to bring it up to date.

**4.178** Further, we recommended Schedule A to the Regulation be reviewed to ensure that all types of projects that could potentially have a significant negative impact on the environment are listed for registration, thereby making the list comprehensive and establishing branch responsibility for the coordination of all EIAs.

***Departmental response***

**4.179** *The Department reviews and updates its regulatory regimes on a regular basis. The EIA process is critical to ensuring minimum impacts to the environment while considering the socioeconomic benefits of development. The Department is committed to making improvements to the EIA process and will do so in the context of its overall mandate. Improvements will be made to Schedule A of the regulation as well as other programming aspects in the coming years. The timing of this is not known at this time due to other commitments and programming changes required in other areas of the Department.*

**Appendix 1****Projects that Must Be Registered Under the EIA Regulation**

According to Schedule A of the Regulation, essentially all projects falling under the following classes of projects (undertakings), must be registered by proponents.

1. Mining and smelting projects;
2. Power generating projects;
3. Water reservoirs;
4. Electric power transmission lines exceeding five kilometers in length;
5. Linear communication transmission systems exceeding five kilometers in length;
6. Commercial extraction or processing of combustible fuels (except wood);
7. Offshore drilling for oil, natural gas, or minerals;
8. Pipelines exceeding five kilometers in length (except water, steam, or domestic wastewater);
9. Causeways and multiple-span bridges;
10. Major highways projects;
11. Facilities for commercial processing of timber (except fuelwood, maple sugaries, shingle mills, and small sawmills);
12. Projects involving the introduction of plant or animal species to NB that are not indigenous;
13. Waste disposal facilities or systems;
14. Facilities established to dispose of, destroy, reprocess, or store waste that originates outside of NB;
15. Sewage disposal and treatment facilities;
16. Provincial or national parks;

17. Major recreational or tourism developments;
18. Ports, harbours, railroads or airports;
19. Projects to transfer water between drainage basins;
20. Waterworks;
21. Major residential developments outside incorporated areas;
22. All projects affecting an unique, rare or endangered feature of the environment;
23. All projects affecting two hectares or more of wetland; and
24. All facilities for the processing of radioactive materials.

## Appendix 2 Summary of Audit Findings

Audit Area and Criterion	Summary of Audit Findings
<u>Registration of Projects</u> - <i>DENV should ensure that all projects are registered as required under the regulation.</i>	The current process is working in ensuring that all projects are registered as required under the Regulation.
<u>Proponent and Public Input</u> - <i>DENV should ensure that the EIA process facilitates the involvement of the proponent and the public in providing their input to the process.</i>	<p>The documented process for getting proponent input was adequate and followed consistently.</p> <p>The process followed for getting public input for proposed projects during the determination review phase needs improvement.</p>
<u>Information to Decision-Makers</u> - <i>DENV should ensure that the EIA process provides decision-makers with complete and accurate information about the environmental risks and benefits associated with proposed projects, along with pertinent recommendations.</i>	The EIA process appears to provide decision-makers with complete and accurate information about the environmental risks and benefits associated with proposed projects, along with pertinent recommendations.
<u>Transparency of Decision-Making</u> - <i>DENV should ensure that decision-making associated with the EIA process is sufficiently transparent to allow the public to understand the rationale for decisions made.</i>	In general, decision-making associated with the EIA process is transparent. However, despite all the useful information presented on the DENV website, we found no clear rationale on a project by project basis for why EIA approvals or certificates of determination were issued. Further, no explanation was provided as to how major issues identified during the review had been addressed.
<u>Reasonableness of Time and Effort</u> - <i>DENV should ensure that the time and effort put into assessing a proposed project is commensurate with identified potential risks to the environment.</i>	The time and effort spent on reviewing specific project proposals is reasonable when compared with the complexity and potential environmental impacts of those proposals. We saw no evidence that too much time was spent on insignificant files or too little on complex ones.
<u>Timeliness of Assessments</u> - <i>DENV should ensure that all aspects of environmental assessment within its control are completed efficiently and without undue delays.</i>	The branch does ensure that all aspects of environmental impact assessment within its control are completed efficiently and without undue delays, given the number of provincial, federal and municipal agencies that are typically involved in reviews.



<b>Audit Area and Criterion</b>	<b>Summary of Audit Findings</b>
<p><u>Monitoring of Conditions of EIA Approvals and Certificates of Determination</u> - <i>DENV should ensure that sufficient monitoring is completed on an ongoing basis to ascertain whether proponents are in compliance with approval conditions.</i></p>	<p>DENV does not complete sufficient monitoring to ascertain whether proponents are in compliance with approval conditions.</p> <p>The branch attaches sufficient conditions to certificates of determination and EIA approvals to allow it to obtain necessary compliance reporting from proponents. However, follow up on delinquent proponent compliance reporting, public reporting of the compliance status of projects, and the review and verification of client assertions are all inadequate at present.</p>
<p><u>Enforcement of Compliance with Conditions of Approval</u> - <i>DENV should take appropriate action where it has determined that approval conditions are not being complied with by proponents.</i></p>	<p>In our testing, we encountered only one identified case of proponent non-compliance. The case posed a significant risk to the environment. The DENV Enforcement Branch has proceeded with enforcement action against the proponent with information and support provided by the Project Assessment and Approvals Branch.</p> <p>However, because of inadequate monitoring, there is a significant risk that cases of non-compliance will not be identified by DENV, and that no enforcement action will therefore be taken.</p>
<p><u>Effectiveness Reporting</u> - <i>DENV should have systems in place to measure and report on the effectiveness of the environmental impact assessment program in achieving its objectives.</i></p>	<p>DENV has only a limited system in place to measure and report on the effectiveness of environmental impact assessment in achieving its objectives. That system would be of limited use in determining areas to target in order to improve program performance.</p>
<p><u>Risk Management</u> - <i>DENV should ensure that all key risks associated with the EIA process have been identified and are being managed.</i></p>	<p>The branch has a good understanding of the risks associated with the EIA program. In general, most identified risks are being adequately managed. Our report recommendations address areas where we feel improvements should be made in risk management processes.</p>
<p><u>Other – Regulatory Review</u></p>	<p>During our audit, we noted that the Environmental Impact Assessment Regulation 87-83 has only been subject to limited modifications since it was first introduced in 1987. DENV began a full review of the Regulation in 2004, but has not completed that review to date.</p> <p>We also identified some types of projects not currently required to be registered under the Regulation that could potentially have a significant negative impact on the environment.</p>

### Appendix 3 Risks Associated With the Environmental Impact Assessment Process

Description of Risk	Looked at in this audit?
Projects that are required to be registered under the Regulation are not registered.	Yes
The Technical Review Committee (TRC) for a project does not represent all pertinent government departments and agencies.	Yes
Proponents and/or the public and other stakeholders do not understand the assessment process or its goals and objectives.	Yes
The EIA process does not facilitate the involvement of proponents.	Yes
The EIA process does not facilitate the involvement of the public and other stakeholders.	Yes
Lack of coordination between the federal and provincial governments relating to the environmental assessment of proposed projects.	Yes
Lack of environmental standards/ completed research upon which to base assessments.	Yes
Time and effort put into assessing a project is excessive.	Yes
Assessments do not involve sufficient depth/breadth of analysis.	Yes
Environmental assessments are not completed efficiently and without undue delays.	Yes
DENV staff does not provide the Minister, and (where required) LGIC, with complete and accurate information about the environmental risks and benefits associated with proposed projects, along with pertinent recommendations.	Yes
Decision-making associated with the EIA process is not sufficiently transparent to allow the proponent, the public, and other stakeholders to understand the rationale for decisions made.	Yes
New information comes to light calling into question the validity of a previous decision made by the Minister or LGIC.	Yes
Sufficient monitoring is not completed on an ongoing basis to ascertain whether proponents are in compliance with conditions of approval and other commitments made during the assessment process.	Yes
Appropriate action is not taken where it has determined that approval conditions and commitments have not been complied with by proponents.	Yes
There is no system in place to measure and report on the effectiveness of the environmental impact assessment program in achieving its objectives.	Yes
The EIA Regulation is not kept up to date.	Yes
Direct participants in assessments (i.e. Project Managers, TRC members, DENV management, the Minister, and the LGIC) are not adequately trained to allow them to effectively and efficiently complete their responsibilities under the EIA regulation. <i>[Note – We did not look at training in our audit. However, the Project Assessment and Approvals Branch did inform us of certain procedures it employs to manage this risk.]</i>	No
Inadequate funding from government to fully support the EIA process.	No