

Mackenzie Valley  
Review Board



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# REFERENCE BULLETIN ON DESIGNATED REGULATORY AGENCIES

*The role of designated regulatory agencies in  
environmental impact assessment in the  
Mackenzie Valley*

**AUGUST 2024**

A large, stylized graphic in shades of blue occupies the right side of the page. It features a large, semi-circular shape with a wavy, undulating interior, resembling a landscape feature like a valley or a stylized sun/moon. The background is a solid dark blue with a pattern of smaller, lighter blue circles scattered across it.

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## About the Review Board

The Mackenzie Valley Environmental Impact Review Board (the Review Board) is an administrative tribunal established through the *Mackenzie Valley Resource Management Act* (the Act) that resulted from the *Gwich'in Comprehensive Land Claim Agreement*, the *Sahtu Dene and Métis Comprehensive Land Claim Agreement*, and the *Tłıchǫ Land Claims and Self-Government Agreement*.

The Review Board conducts environmental assessments and environmental impact reviews in the Mackenzie Valley under subsection 114(a) of the Act. The Review Board's mandate is broad and comes from Part 5 of the Act. As per section 115 of the Act, the Review Board must consider in its proceedings:

- *the protection of the environment from significant adverse impacts,*
- *the social, cultural and economic well-being of residents and communities in the Mackenzie Valley, and,*
- *the importance of conservation to the well-being and way of life of Indigenous peoples to whom section 35 of the Constitution Act, 1982 applies and who use an area of the Mackenzie Valley.*



## 1 Introduction

The *Mackenzie Valley Resource Management Act* (the Act) sets out the framework for land and water management decision-making in the Mackenzie Valley, as required by land claim agreements.<sup>1</sup> Part 5 of the Act establishes the Mackenzie Valley Environmental Impact Review Board (Review Board) as the main body for conducting environmental assessments (EA) and environmental impact reviews in the Mackenzie Valley.<sup>2</sup> Under its broad mandate, the Review Board can consider issues relevant to subject matter experts and/or regulatory authorities in its proceedings.

The Review Board is releasing this reference bulletin to provide the public and participants in EA with information about the important role that designated regulatory agencies (DRAs) play in impact assessment in the Mackenzie Valley. This document focuses primarily on environmental assessment, but the Act also contains provisions to describe the role of DRAs in environmental impact reviews.<sup>3</sup>

This document describes:

- what DRAs are,
- the roles and responsibilities of DRAs as set out in Part 5 of the Act including as preliminary screeners, referral authorities, and decision-makers,
- how the requirements of Part 5 must be satisfied before a DRA can authorize any regulated activities, and,
- how DRAs contribute to effective and efficient EA proceedings.

## 2 What are designated regulatory agencies (DRAs)?

Designated regulatory agencies (DRAs) are agencies of the Crown—the Canada Energy Regulator (CER)<sup>4,5</sup> and the Canadian Nuclear Safety Commission (CNSC)<sup>6</sup>—established under federal legislation.<sup>7</sup> They have important roles in the federal energy regime, including both the approval and management

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<sup>1</sup> *Gwich'in Comprehensive Land Claim Agreement, Sahtú Dene and Métis Comprehensive Land Claim Agreement, the Déline Final Self-Government Agreement and the Tłı̨chǫ Land Claims and Self-Government Agreement.*

<sup>2</sup> as per subsection 114(a). Environmental impact reviews are conducted by a review panel, as described in subsection 133(1) of the Act.

<sup>3</sup> If there is a review or examination under sections 138 or 141, the Review Board will coordinate with DRAs accordingly.

<sup>4</sup> The CER was formerly known as the National Energy Board.

<sup>5</sup> Since devolution in 2014, most onshore oil and gas activities within the Mackenzie Valley are regulated by the *Regulator* under the Northwest Territories' *Oil and Gas Operations Act*. The *Regulator* acts also as a regulatory authority as per section 111 of the *Mackenzie Valley Resource Management Act* but is not listed as a designated regulated agency in Schedule 1.

<sup>6</sup> The *Nuclear Safety and Control Act* came into force in 2000 and established CNSC when it replaced the *Atomic Energy Control Act*.

<sup>7</sup> The CER is established by the *Canadian Energy Regulator Act*, and the CNSC the *Nuclear Safety and Control Act*. CER and CNSC are the only DRAs listed in Schedule 1 of the *Mackenzie Valley Resource Management Act*.



of oil and gas activities on Canada lands<sup>8</sup>, and the development and use of nuclear power<sup>9</sup>, respectively. Both agencies have the quasi-judicial powers of a superior court with respect to the production and examination of evidence and the enforcement of their decisions. As administrative tribunals they operate at arm's length from the federal government. Both run project review processing as prescribed by their enabling legislation and make decisions within their jurisdiction.

These agencies have responsibilities for the environmental effects of the activities that they manage as well as regulation and enforcement of the activities for which they are responsible under their own legislation. In the Mackenzie Valley, however, the *Mackenzie Valley Resource Management Act*, which implements land claim requirements for environmental impact assessment, applies to these DRA activities.<sup>10</sup> The special roles of these agencies have therefore been reflected in Part 5 of the Act.

### 3 Roles and responsibilities of DRAs under Part 5

DRAs perform two main roles under the Part 5 of the Act, including as:

- preliminary screeners with referral authorities, and,
- decision-makers.

#### 3.1 Preliminary screening and referral

DRAs conduct preliminary screenings on proposed developments that are subject to their respective mandates, based on their authorities under subsection 124(1) of the Act.<sup>11</sup> DRAs also have the authority to refer a development to EA notwithstanding the result of another preliminary screener's determination under subsection 126(2) of the Act.<sup>12</sup>

The Review Board may exercise discretion under subsection 126(3) to order a CER–or CNSC–regulated project to EA notwithstanding the result of a preliminary screening. If the project is not

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<sup>8</sup> The CER has jurisdiction over federal aspects of energy in Canada, including interprovincial pipelines and powerlines under the *Canadian Energy Regulator Act*, and oil and gas activities in federally managed areas in the Mackenzie Valley under the *Canada Oil and Gas Operations Act* and the *Canada Petroleum Resources Act*. The CER also has jurisdiction in certain portions of the Inuvialuit Settlement Region under the Northwest Territories' *Oil and Gas Operations Act*.

<sup>9</sup> The CNSC regulates the development, production and use of nuclear energy and substances, gives relevant scientific and regulatory information to the public, and implements Canada's international commitments on relative topics.

<sup>10</sup> DRAs are referred to as "independent regulatory agencies" in land claim agreements.

<sup>11</sup> Please see the Review Board's [Guideline for Preliminary Screeners](#) for more information on preliminary screening processes and authorities.

<sup>12</sup> This does not fetter other referral authorities under subsection 126(2).



referred to EA, it proceeds along standard regulatory pathways for licences, permits and other required authorizations under the CER's or CNSC's own legislation and any other required approvals.

### 3.2 Decision-making

At the end of an EA, the Review Board makes a recommendation about whether an environmental impact review should be conducted, or whether the proposed development should proceed to approval under the regulatory phase (and, if so, under what conditions). This recommendation is written in a *Report of Environmental Assessment*. If a licence, permit or other authorization from a DRA is required for a proposed development to proceed, the Review Board must send a copy of its report to the DRA in addition to every other decision-maker for the project.<sup>13</sup> As a decision-maker, the DRA must consider the Review Board's report and can either decide to:

- adopt the recommendation or refer it back for further consideration; or,
- consult with the Review Board and adopt the recommendation with modifications or reject the Review Board's recommendation and order an environmental impact review.<sup>14,15</sup>

## 4 DRAs can complete their legislative regulatory mandates once the requirements of Part 5 have been satisfied

DRAs can only complete their regulatory mandates if and when all decision makers, including the DRAs, accept the Review Board's recommendation to approve a proposed development.<sup>16</sup> During this phase, the DRA can complete its regulatory duties for a project, pursuant to their own mandates and policies. In conducting its regulatory functions, a DRA will carry out, to the extent of its authority, any recommendation it adopts.<sup>17</sup>

Section 118 of the Act prohibits the DRAs from issuing any licence, permit, or other authorization needed for the carrying out of a development until the requirements of Part 5 of the Act have been satisfied. This statutory sequencing mirrors the requirements of section 62 of the Act which prohibits

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<sup>13</sup> See subsection 128(2) of the Act.

<sup>14</sup> See subsection 131(1) of the Act.

<sup>15</sup> After EA is completed, the Review Board, the ministers, the Tłı̨chǫ Government, or the DRAs can refer the project for an EIR where sections 132–137.3 apply. Following an EIR by the Review Panel under section 132, the DRA makes a decision under section 137.

<sup>16</sup> See subsection 128(1)(a) and paragraph 128(1)(b)(ii) of the Act.

<sup>17</sup> See subsection 131(2) of the Act.



land and water boards from issuing of any licence, permit or authorization required to carry out a proposed development until the requirements of Part 5 have been fulfilled.

The exclusion of time limits for land and water board water licences for projects that require an EA under subsection 72.22(2) in combination with the requirements of section 62 of the Act allows the land and water boards to pause their regulatory proceedings if a project is referred to EA. Regulatory proceedings resume upon completion of the EA.<sup>18</sup> However, subsection 72.22(2) does not apply to DRAs.

During an environmental assessment under Part 5 of the Act, the Review Board may, for purposes of efficiency:

- request that a DRA pause its regulatory proceeding, or,
- seek to coordinate its activities with the activities of a DRA.<sup>19</sup>

## 5 DRAs contribute to effective and efficient environmental assessments in the Mackenzie Valley

The Review Board runs effective and procedurally fair environmental impact assessment processes that result in wise decisions. The Review Board recognizes and values the technical expertise of DRAs and encourages their active participation in all aspects of EA proceedings. In environmental impact assessment proceedings where a DRA is involved, the Review Board may request and rely on their technical expertise. Both the CNSC and CER are agencies of the Crown and have the Duty-to-Consult-and-Accommodate obligations for any decisions or actions they take. These agencies have Indigenous consultation and engagement processes and policies established for their respective regulatory and decision-making processes.

The Review Board continually seeks ways to strengthen our relationships with the DRAs, promote effective cooperation in areas of mutual interest and benefit, and support our partners in impact assessment. To this end the Review Board recently updated its [Memorandum of Understanding](#) with the CER. We look forward to more work with the DRAs to strengthen our relationships by developing other Memoranda of Understanding and associated Implementation Plans, as required. Guided by these strong relationships, we will continue working with the DRAs and all participants in environmental impact assessment proceedings to carry out our respective mandates in good ways, for the benefit of all residents and communities in the Mackenzie Valley.

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<sup>18</sup> Subsection 72.22(2) also applies to projects that are referred to environmental impact review.

<sup>19</sup> This is operationalized when the Review Board enters an arrangement with the DRAs where both parties seek to promote effective cooperation and share a mutual desire to harmonize their review processes.

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