



MANITOBA ECO-NETWORK

302 – 583 Ellice Avenue, Winnipeg MB R3B 1Z7

Tel: 204-947-6511 www.mbeconetwork.org

October 10, 2024

Submitted via the [Canada Gazette](#)

Sarah Jackson, Director
Legislative and Regulatory Affairs Division
Impact Assessment Agency of Canada
regulations-reglements@iaac-aeic.gc.ca

Re: Manitoba Eco-Network Comments on the Order Designating Certain Excluded Classes of Projects

The Manitoba Eco-Network appreciates the opportunity to provide feedback on the [Order Designating Certain Excluded Classes of Projects](#) that will repeal and replace the existing Ministerial Exclusion Order which identifies the types of projects the Minister of Environment and Climate Change has determined will cause only “insignificant adverse environment effects”, and therefore are exempt from the federal impact assessment requirements under s. 82 and s. 83 of *The Impact Assessment Act*. The new Order would increase the number of projects that are excluded from federal impact assessment requirements by adding additional classes of projects and making changes to existing classes of excluded projects.

For this submission, the Eco-Network has drawn from past experiences engaging in provincial and federal impact assessment processes and the insights of experts on our Policy Committee like Dr. Patricia Fitzpatrick. We have also partnered with an academic researcher, Chantal Brodbeck, who is nearing the end of a research project directed at exploring the nature of impacts assessment conducted for projects on federal lands.

General Comments:

A robust federal impact assessment process is an important element of the framework of legal protections available to Manitobans to ensure new and existing developments do not detrimentally impact the environment or our health. Although the Agency has claimed that provincial regulatory requirements and assessment processes adequately fulfill federal environmental responsibilities, this is not the case in many Canadian jurisdictions, including Manitoba. Our current environmental assessment process under *The Environment Act* is outdated and in need of significant reform.

Despite many requests from Manitobans, the Minister of Environment and Climate Change has not yet exercised their power to designate projects under s. 9. Nor has any project met the thresholds established under the Physical Activities Regulations (SOR/2019-285). Thus, all federal impact assessments in Manitoba have been undertaken by federal authorities, based on their physical siting on federal lands (s. 81-91). This type of assessment is undertaken by federal authorities (FA) as opposed to the Agency, has a limited scope of factors to be considered, and require the FA to post only the project notice and project determination on the public registry. As such, very little information is available to better understand the relative impacts of projects undertaken on federal lands.

The Eco-Network was hoping this consultation would help provide more insight into project-specific- and cumulative- effects associated with the more than 2700 assessment on federal lands completed between

2019 and 2023, however, the supporting evidence outlined in the Gazette provides is lacking. As such, we do not have enough information to understand the Minister’s determination that the near doubling of the number of projects excluded from this type of review is justified as these projects have “only insignificant adverse effects.”

Before any changes are made that will result in more projects being exempt from the federal impact assessment processes, these structural problems with transparency, accountability and documentation need to be fixed.

The Eco-Network is already concerned that potential adverse effects on federal jurisdiction are not being adequately captured, leaving gaps in the overall regulatory framework. We are particularly troubled by the lack of consideration afforded to the cumulative effects which may result from a **not insignificant** number of physical activities carried out on federal lands annually. Adding more projects to the exclusion list at this time seems like a move in the wrong direction.

Comments on the Objective section:

The lack of information in the Gazette has left us with questions about the rationale for the proposed changes and the potential impact of these changes on the federal impact assessment process and associated government resources. The Agency’s suggestion that the proposed amendments to the Ministerial Exclusion Order will help “free up resources for other areas” and “projects that benefit from project-specific assessment and public consultation” is concerning and raises questions about the use of current resources and the Agency’s overall perspective on public consultation.

In the Manitoba Eco-Network’s opinion, the inclusion of opportunities for meaningful public engagement is beneficial in all environmental decision-making processes. This is particularly true when statutory requirements and available public information do not provide adequate transparency for members of the public to understand how and why important environmental decisions are being made. Without more insight into the current resourcing problems being experienced by the Agency, we do not feel the reduction of opportunities for public consultation is an appropriate objective or method of increasing available Agency resources.

Comments on the Background section:

In general, there is a lack of transparency and accountability when it comes to the requirements of the federal impact assessment process under sections 81-91 of the *Impact Assessment Act*. This is in part due to the ongoing gaps in data and missing files from the public registry.

Overall, the information provided in the public registry is quite limited. For example, Ms. Brodbeck’s research, focused on assessment conducted by Indigenous Services Canada, identified at least 68 assessments missing one of the two documents (i.e., the notice of commencement and notice of determination) that must be included in the public registry based on the requirements under the *Impact Assessment Act*.

Even when these documents are available, they often provide the bare minimum of required information. For example, most project descriptions are less than three paragraphs in length. These typically focus on the physical activities, not the potential impacts. In one notable instance - the [GL7 Phase 1 Transmission Rebuilt Project \(Reference no. 83863\)](#) - the project description does not include the length of the transmission line. Without this information, it would be very difficult for members of the public to provide feedback on the potential impacts.

Very few assessments provide any information about the mitigation measures, residual effects, or follow-up requirements associated with the physical work. For the 527 projects for which there is a notice of determination, Ms. Brodbeck found:

- Only 23 (of a possible 554) assessments conducted by Indigenous Services Canada include documentation outside the required notice of commencement and notice of determination.
- 33 project determinations do not list any reasons for the decision.
- 254 project determinations list the general considerations without any project specific information.
- 227 project determinations list the specific considerations.

This lack of publicly available information is concerning particularly since out of 554 assessments undertaken by Indigenous Services Canada from 2019-2023, **not one project was turned down.**¹ In fact, only one project was found to be “likely to cause environmental effects” – but this project was approved with apparent mitigation measures in place. Despite reviewing all of these files, Ms. Brodbeck was not able to identify many useful insights about how the Agency is making these project determinations, including how projects are determined to be “not likely to cause significant environmental effects.”

In short, the public record surrounding the assessment of projects on federal lands is sorely lacking. This consultation opportunity has unfortunately not provided any additional insights to explain how project determinations are made. Similarly, there is also a lack of data to support the need to expand the exclusion list. With this consultation, the Agency has missed an opportunity to demonstrate the calibre of the assessment process for projects on federal lands and that Federal Authorities are implementing federal impact assessment requirements in a way that reflects best practices.

Without more information on how decisions are being made on whether a project will have significant environmental effects or not, it is difficult to trust that the Minister and Agency are making project determinations that reflect the best interests of the public, and that an expansion of the exclusion list is an appropriate response.

Comments on Proposed Regulatory Text section:

The Manitoba Eco-Network does not support the proposed changes to the *Order Designating Certain Excluded Classes of Projects*. We think there is insufficient data and a lack of transparent information to support the new Ministerial Exclusion Order articulated in the Gazette. We would not be supportive of any changes until there is more publicly available evidence to support the conclusions of the Agency about the need for reform.

The Supreme Court of Canada in its recent decision about the federal *Impact Assessment Act* was clear that the Government of Canada continues to have authority to conduct robust impact assessments of projects within federal jurisdictions. However, based on the information on the public record, there is not enough data currently available to assure Canadians that federal impact assessments are actually being undertaken in a way that effectively “prevents or mitigates significant adverse effects within federal jurisdiction”.

To improve accountability and transparency, there is a need for more information about federal impact assessments on the public record. We recommend the Agency include more regulatory requirements for public information in future versions of the Ministerial Order and other proposed regulatory reforms.

¹ 45 assessments are marked as complete but are missing the determination; as such, we are unable to ascertain information about those cases.

This includes regulatory requirements for: detailed project descriptions, clear explanation of proposed mitigation measures and residual impacts (e.g., in the notice of determination document), more public information about follow-up and monitoring requirements and results, and more data about potential cumulative effects. We also recommend making all comments received by the public available in the public registry.

These additional requirements would help provide necessary insights into the way project determinations are currently being made and provide more transparency and accountability from the Agency. There is a need for a quality assurance program across all federal authorities to ensure that federal impact assessments are undertaken in a robust and accountable manner. Requiring more publicly available details and more transparency from decision-makers would be a positive step in that direction.

Conclusion:

The Manitoba Eco-Network does not have enough information to be able to support the proposed changes to the Ministerial Exclusion Order. Due to the gaps in public data, there is not enough available information to understand the rationale behind the proposed changes or support the Agency's proposal to increase the number of projects excluded from the federal impact assessment process under the *Impact Assessment Act*. The Agency needs to fix structural, ongoing problems with transparency and accountability before any changes are made that will result in more projects being exempt from the federal impact assessment process.

This consultation has provided an important opportunity for the public to provide feedback on the proposed updates to the *Order Designating Certain Excluded Classes of Projects*. However, we recommend the Agency stop and ensure there is more public data to support an expansion of the number of projects that are exempt from the federal impact assessment process, before any changes are implemented.

The Agency is tasked with coordinating and harmonizing one of Canada's most important environmental decision-making processes, in a way that fosters sustainability and applies the precautionary principle, among other important considerations. To ensure federal impact assessment requirements are applied in a way that is fair and predictable and efficient, there is a need for more transparency into the way current decisions are made. Fixing existing gaps in data and providing more information about the internal processes followed by the Agency will also facilitate the implementation of the federal impact assessment process in a way that reflects the principles of scientific integrity, honesty, objectivity, thoroughness, and accuracy.

Sincerely,

Heather Fast, J.D., LL.M., Policy Advocacy Director, Manitoba Eco-Network

Chantal Brodbeck, Research Assistant, University of Winnipeg

Dr. Patricia Fitzpatrick, University of Winnipeg