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October 9, 2014

Minister Mackintosh
Minister Responsible for the Environment Act
Room 330
Manitoba Legislative Building
Winnipeg, Manitoba.

Dear Minister:

**Re: Manitoba Conservation Review of the Environment Act Public Registry File #5711**

Given the nature of this regulatory review it is relevant to identify my activity with relation to the Manitoba Environment Act, starting in 1985. At the time I was the staff liaison for new public policy for the Manitoba New Democratic Party. I attended committee meetings regarding policy in support of a new Environment Act in Manitoba, and managed the resolutions debated at annual conventions supporting the move to the current Environment Act. I also was a member of the Ministerial Advisory Committee for the cabinet portfolio that included Environment. Discussions about proclaiming the 1987 Act and the steps required were part of the committee deliberations. When that government fell early in 1988 many were advising proclaiming the Act despite the situation. That was done. The subsequent provincial government continued steps to make the Act operational, established the Clean Environment Commission, the new job categories, the public registry, and the licensing process. The approach to grandfathering pre-existing licenses took place then also.

More recently I have worked in relation to the Act during the past 20 years. In roles with World Wildlife Fund Canada, and Nature Canada, then through Manitoba Wildlands, I have participated in several sets of Clean Environment Commission hearings, and many more reviews of proposals under the Act. These sets of review comments are on the public record (though this has been significantly limited with the advent of the on line registry and closure of the complete public registry at 123 Main Street.) The Manitoba Wildlands website also holds many of these work products, including from CEC hearings.

It should be stated that I have assisted environmental and legal colleagues across Canada with respect to Manitoba's regulatory system, and the Act, during this same 20 year period.

In short my occupational activity has been clearly connected to this Manitoba law since before it was law. As director of Manitoba Wildlands it may be that I have had the most to do with this Act outside the ranks of government or those consulting firms who work for proponents.

We are providing here some explanation in a covering letter, with a set of **Recommendations** for improvements in the Act. These are based on experience with the Act, and from watching changes in the administration of the law, changes in the types of proposals filed under the law, and continuing knowledge about environmental effects, assessments, and impacts. The Act is based on 1970s and early 1980s knowledge and concerns. Today 30 years later our knowledge

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and concerns have increased, changed, and accumulated. The risks to our environment and sustainability have increased exponentially also.

The greatest weakness of the Act and the two discussion papers is the lack of clear language about the natural world and natural environmental elements. Language about environmental protection that lacks a clear cohesive understanding that our entire economy is based on the environment leaves us all at risk from decision making. Watershed, ecosystem, natural region and habitat bases for assessments are urgently needed in our environmental regulatory system in Manitoba.

**Climate change is now potentially part of the standards and effects for most proposals under the Act**. It is clear that we are doing a poor job of placing requirements in place regarding climate change for proponents to obtain an environment licence. This means we have already a working example of why the Act needs to be changed to be able to open licences so we deal with new impacts and environmental effects from existing licensed projects. Two sets of recent CEC hearings demonstrated the weak approach we are taking to requirements for climate change mitigation, emissions reduction, and a clear information basis regarding climate change effects in Manitoba. Nothing was done to hold the proponent to the public policy, regulatory requirements and environmental effects of climate change in either case. Today we still do not have a carbon inventory or emissions budget for the province, with clear goals. This impacts our ability to make decisions under the Act.

**Manitoba is overdue to adjust to current standards, best practices, and knowledge for environmental effects assessment and cumulative effects assessment** – as demonstrated in recent Class 2 & 3 decision making and licences issued. A main observation would be that Manitoba has simply not kept up to date with respect to the science, technical knowledge, conservation biology or standards being applied to decision making in other jurisdictions. On that basis we consider it relevant to provide our comments. See our Recommendations.

We would note though that the lack of face to face discussion and exploration of steps to improve the Act is a real weakness of the Manitoba Conservation process. The first round, or first steps which have often been effectively used in Manitoba, with Manitobans, were omitted in the 'consultation' about updating our Environment Act. A social democrat or humanist standard would assume that listening and learning are part of everyone's responsibility. This includes listening and learning from Manitobans in person about the reality of our Environment Act, and the potential for improvements. This has simply not been done by our government.

**Discussion Papers/ Two Reviews.**

**The Manitoba Law Reform Commission has been conducting a review** of the Environment Act since late 2013. Their initial discussion paper ignored the step that was needed: to talk with Manitobans about the Act. They have since conducted extensive in person interviews with Manitobans who have worked with the Act, with licensing, and in hearings. They are mandated to report by the end of 2014. Their discussion paper was based on a set of assumptions that skip over the reality of the Act, the operation of the law, and what is needed to review and improve the Act. In short, it had an agenda. We note that the notes taken during our in person interview with the Law Reform Commission vary widely from the content of the audio file of that same

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interview. The audio file has been used in arriving at the content of this cover letter and our set of Recommendations.

**More recently Manitoba Conservation was mandated**, through the office of the Director under the Act, to conduct a 'consultation' regarding changes to the Act. They too issued a discussion paper. They too missed the first step, to talk with those of us who are most experienced with the citizen role in the Intent of the Act. The difficulty with the numerous discussion papers including this one, issued by the Department in recent years, is they each dictate a response to what the government has put on the page. By definition a number of elements are likely to be left out as a result. This discussion paper is based on assumptions that are not accurate, which essentially means the exercise and discussion paper are weak and they have an agenda.

**Both discussion papers give little attention to the importance of citizen actions, citizen participation, independent, external audits and analysis**. The knowledge of Manitobans about making best decisions about our lands, water, and air, in practice, is only given lip service in the discussion papers. See Intent of the Act below. This is unfortunate. A public consultation that is a blind web page with no record of what was filed, and no ability to share what was filed is an exercise in hubris, potentially designed by staff who are sure that they know what needs to be done. (We note that the discussion paper is on the public registry and hope that means comments will be posted.) It is certainly not a good faith exercise with citizens. Nor does it bear any resemblance to the steps which brought Manitoba to its current Environment Act. It remains a mystery what is intended as next steps regarding the Environment Act review.

There is a question here. Should a lawyer for a major proponent in Manitoba, holder of numerous licences under the Act, serve as an advisor to the Law Reform Commission regarding their review, and be privy to all documents etc ? Also should the Director responsible for all licences under the Act be the senior civil servant handling the government and public review of the Act ?

**We are providing recommendations**, rather than detailed response to the two discussion papers contents. Where relevant we have agreed with the identification of action needed. It would be better form to acknowledge sources for these actions identified in the two discussion papers. Certain of these are from repeated reports from our Clean Environment Commission. (We are not including recommendations specific to the Clean Environment Commission, as it would require resources not available at this time.)

**The comments and recommendations provided here by Manitoba Wildlands are not complete**. Rather they are based on our experience, knowledge and capacity to respond at this time. It is clear to us that the Intent of this Act has not been fulfilled in recent years. There is a great deal of work to do.

Basis to reject a proposal or EIS or EAP under the Act is weak. Regulatory steps to seek a licence after an emergency are lacking in our Act, and a major instance of this will begin soon. Talk of sustainability is just one example of definitions missing in this Act.

We provide below significant clauses in the Act, relevant to our comments.

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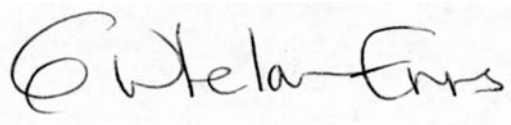
**Intent and purposes Section 1(1_)**
1(1) The intent of this Act is to develop and maintain an environmental protection and management system in Manitoba which will ensure that the environment is protected and maintained in such a manner as to sustain a high quality of life, including social and economic development, recreation and leisure for this and future generations, and in this regard, this Act
(a) is complementary to, and support for, existing and future provincial planning and policy mechanisms;
(b) provides for the environmental assessment of projects which are likely to have significant effects on the environment;
(c) provides for the recognition and utilization of existing effective review processes that adequately address environmental issues;
(d) provides for public consultation in environmental decision making while recognizing the responsibility of elected government including municipal governments as decision makers; and
(e) prohibits the unauthorized release of pollutants having a significant adverse effect on the environment.

**Public registry Section 17**
17 Subject to section 47, the director shall maintain or cause to be maintained a public registry, containing for each proposal received
(a) a summary, prepared by the proponent in form and detail approved by the department;
(b) the disposition and status of each proposal;
(c) a copy of the environmental licence, where applicable;
(d) a copy of the assessment report;
(e) justification for not accepting the advice and recommendations of the commission, where applicable; and
(f) justification for refusing to issue an environmental licence, where applicable; and
(g) such other information as the minister or director may from time to time direct.
Regulation development Section 41(
41(2) Except in circumstances considered by the minister to be of an emergency nature, in the formulation or substantive review of regulations incorporating environmental standards, limits, terms or conditions on developments under this Act, the minister shall provide opportunity for public consultation and seek advice and recommendations regarding the proposed regulations or amendments.

Yours truly,



Gaile Whelan Enns, Director, Manitoba Wildlands

Copy to:

Ms T Braun, Mr. R Labossiere

Law Reform Commission of Manitoba

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*October 2014. See cover letter attached.*

**Manitoba Wildlands Recommendations Manitoba Environment Act review**

**Intent of the Act**
**Intent of the Act Section 1(1) (a)**
Section (a) is complementary to, and support for, existing and future provincial planning and policy mechanisms;

**Over the last several year the Intent of the Act has been consistently reduced, and avoided with respect to Section 1(1) a.** This reduction and omission is a contradiction of the Act itself. Public policy and provincial planning mechanisms are no longer a part of EIS, Guidelines, Scoping Document requirements, or accountability by the proponent. For 25 years proponents were expected to respond to and indicate how they would fulfill public policy related to their proposal under the Act. As a public research and information organization Manitoba Wildlands has written letters, conducted cross examination, filed review comments and reminded the government they are operating in a way that is outside the Intent of the Act.

Minister Mackintosh' approach to recent licences refer to current and future public policy and standards. More is needed, as the public policy standards must be part of all steps prior to a decision under the Act. We need to return to this Intent, and the practices under the Act that supported it. This means that the Guides and Guidelines for each sector or type of project, and the EIS contents must again include public policy requirements and standards. Manitoba Wildlands is available to assist in identifying public policy standards relevant to proposals under the Act.

There have been changes to the Act, new regulations especially, where public notification was less than optimum. The public registry has stopped including such changes to the Act, or related legislation – while this used to be part of notification. **We recommend that any change to a regulation, or the Act be subject to posting in the public registry, and therefore notification with a public review period. Any person responding to review of changes to the Act should then be notified when legislation goes to committee at second reading.**

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**All Acts & All Regulations and their instruments be Disclosed:**

**Every Licence issued under the Manitoba Environment Act must also disclose and identify the permits, licences, permissions, agreements, leases, etc under the Environment and other Manitoba Acts** necessary or dependent upon the Environment Act licence. This involves identifying which other laws or Acts are involved in decision making and regulatory steps for the proposal under the Environment Act. This step needs to be reflected throughout the regulatory system. The information about all laws and all regulations pertaining to the proposal obtaining an environment licence should be included and responded to by the proponent in their EA or EIS, and be subject to comment and questions during hearings and reviews. Guides, Guidelines, and scoping documents should require this information.

Public participation as intended in the Act, and discussion paper, would be enhanced.

This update to our regulatory process and the Environment Act means that the public registry would at the least provide links to the public information posted regarding all other licences, permits, leases etc enabled or used as the basis for the proposal and request for an environment act licence.

Currently little of this information is clear or accessible. If you know the 'system' for one sector or another you will have a sense of the Mines Act, Forestry Act, Crown Lands Act, etc permits, leases, agreements, permissions that are also part of the decision making with respect to the Environment Act proposal in question. Much more needs to be done to support best practices and best decisions.

Currently crown land leases are often issued separate from, and without any notification regarding subsequent environment act proposal and licence sought. This confusion and blinding of our system must change with the updates to the Act.

**Which Act has legal precedence ?**
It is unclear which laws of Manitoba can take precedence over the Environment Act, if any. Recently an appeal to Queen's Bench Court resulted in a decision that the Forestry Act takes precedence over the Environment Act. Clearly work needs to be done, and the public and proponents need to understand the interaction between as many as several laws when an environmental licence is sought or granted. The Act needs amendment and new language in this area.

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**It is especially urgent that any environment act proposal indicate clearly whether it would use crown lands and waters**, what permits or leases the proposal is based on or what the environmental licence would enable in use of crown lands and waters, while identifying which Act or regulations are involved. **The Guides for proponents, which are not public, will need to require this information.**

**EG: A licence for a wind energy project** would list all other permits, leases, agreements etc required for the Environment Act licence to be operational. Today in Manitoba we have 10 wind energy projects licensed which are NOT operating, not built etc because they were refused certain of the other permits, agreements, leases etc required. This information needs to be part of the required information for all parties including proponents from the start of the regulatory steps. See Guides and Guidelines comment above.

**EG: When we issue an Environment Act licence for a hydro transmission project** there is no information provided about the other laws, and leases, permits etc required. Nor is there information in the public registry about federal responsibility within certain projects. This blinding of our system means that Crown Lands leases, various class 1 licences required for the project, and a range of other work permits and leases are not public. It is simply unclear how these are monitored, tracked, or reviewed during the life of a project.

**EG:** Listed and Endangered Species are often part of the assessment and technical information filed by the proponent for a class 2 or class 3 project. To date there is no mechanism in the Environment Act or the CEC mandate from the Minister to make sure licenses or CEC recommendations identify responsibility under other Environmental Laws in Manitoba. This is another blinding of our 'protection' system where we are not using our own laws when considering a proposal or possible licence under the Environment Act. So listed and endangered species are an obvious, and far from the only example, where elements of the environment in the EIS need specific action under another Manitoba Law. The government discussion paper speaks about changes over time and new mechanisms for environmental protection. We are simply not using the regulatory tools we have. The Environment Act needs to be amended so that licenses can clearly direct action under other environmental laws.

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**Water and Crown Lands Information – Make It Public**
We are overdue in Manitoba to make all water use permits, leases, and licences public. This change to the environment act and the public registry sytem would benefit decision making, help municipalities, and improve the quality of land and water management. We recommended this step when the Water Protection Act was reviewed at second reading. Complimentary to this step is the need to list all crown land leases in a public format, preferably on line.

Many Class 1 licences involve both public lands, and public waters. Often there are private lands involved. The same is true of Class 2 and Class 3 licences. It is time to bring water into the Environment Act where definitions, standards, and combined land and water effects are part of all assessments. Again the government discussion paper comments on the need to move forward. Good governance alone demands public information about crown land and water leases and permits. Our system is blind in this regard, and questions on these matters in CEC hearings are ignored, or answers avoid the question and the issue.

**Environment licences for Forest Operations and Mills lack public review**
It is 17 years since Manitoba conducted a public review and full regulatory decision making process for a forest management area environmental licence. Recently these steps were started for a new long term forest management environment licence for Louisiana Pacific. Abruptly that process was stopped, and a 6 year extension to the existing environment licence was issued without notification, consultation, etc. One result of this flawed decision is that the draft operations plan from the company becomes the defacto plan. This essentially means that the forest management plan from the company is in place without any technical review, public reviews, hearings or Aboriginal Consultations. There is little to rationalize this approach, and clear increase in risk will result from the decision.

The Louisiana Pacific operation is the newest, most southern forest management area in Canada. It provides a real opportunity for cumulative effects assessment, and improvements going forward. The combination of private and public lands involved is also unique in western Canada, and provide another basis for study.

As the Manitoba Conservation discussion paper points out, we are failures at cumulative assessment, environmental effects assessment, and using internationally accepted and practiced standards for both of the former assessments. Manitoba has no best practices with respect to decisions regarding

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environmental licences. Instead we dodge cumulative effects assessment as we have here. See our comments about the record and expert advise in CEC hearings.

Forest Company Licences, both for plant or mill and forest lands, should be reviewed publicly every five years, and all information about current licences and permits should be public for the duration of any licence or permits. Also annual reports on operations should no longer be secret. If there is in fact a compliance process and the company is filing its annual operations reports on the mill and on the forest management area operations then these should be public. This is the only way that the 'new compliance tools' which the government discussion paper mentions can be seen to have results.

We note that the chart re classes of development in the Act on page 7 of the government discussion paper leaves out the forestry industry. Animal operations are also missing. Airports are also missing. There have recently been CEC hearings for a food processing plant, which was *not* a Class 1 development. Simply put the chart is inadequate.

**Standards for Proponent public information, public engagement, and public open house must be clear, public, provided with the posting of any proposal under the Act.** The separation of information regarding the proposal and regulatory process is confusing to Manitobans. Often it is not clear whose information and whose voice is being used. Having standards available as to what is required of any proponent, especially for Class 2 and Class 3 developments, will improve public participation and decision making. We recommend that all proponents have a Guide to what they must do in an open house, how to make the schedule and information public, and what they can take from an open house process to use in their filings. This could make the contents of EIS filings valid.

**The Public Registry under the Environment Act** requires considerable updating, fixing and improving before it can be considered to be a true public registry. Always it is essential when changing a process or mechanism to ask two questions: What will we achieve, and what will we lose? This step was not fulfilled in moving Manitoba to an online public registry.

**Moving to an online public registry left an incomplete registry, and has been a limiting and reducing exercise based on in house myths and assumptions. All information about an existing licence should be accessible and public through the life of that licence. Manitoba consistently appears to not**

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**understand that it is usually citizens who know when something has gone wrong at a mine, mill, installation, etc.**

**Questions to Answer: Public Registry**

- Where are the paper files for all existing licences in Manitoba?
- Do department staff have access to the files? Do they have their own set?
- Were any of the deficiencies or gaps in the existing files corrected before being transferred to the Legislative Library?
- Why are people being forced to submit a similar to a FIPPA request when requesting information from the public registry?
- Information for ***existing class 2 and class 3 licences*** should be posted and available.
- Is there any standard for answering a request for information from the public registry that only environment officers can locate?
- Is the box list for public registry materials in archives public?
- Do we all understand that the public registry is not simply or only about issuing a licence after review? It is also for monitoring the activities and standards under that licence for the duration of the licence?
- Where is the listing of all public registry materials moved to the Legislative Library ?
- Where is the guide for the online public registry ? This is not a citizen oriented guide:
- http://www.gov.mb.ca/conservation/eal/publs/publ_registry_guide.pdf
- Why does the public registry subscription service demand an RSS service, when a variety of other tools are available? Note – government press release service does not require an RSS.
- Will Manitoba Conservation staff or Legislative Library staff obtain requested environment licence materials which are archived ?
- Is an 8 month wait for a requested environment act filing needed in a public review process acceptable ?
- What are the procedures for processing the multiple copies of a Class 2 or Class 3 proposal and filing from a proponent ? Are these given to university libraries, offered to professors or academics, archived or are they being destroyed ?
- Have we made sure that the practice of government using the proponent's website for the EIS materials stops? This leaves the public registry with nothing when the proponent takes materials off line.

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- Are there standards for how long a proponent is required to keep its proposal and filings on its own website?

We need to make sure that public registry, the branch websites, and any other needs for website space with respect to the environment act regulatory process ***always has enough technical capacity*** for making information public. A shortage of storage space etc can not be used as an excuse.

**Show who is responsible and accountable for all aspects of regulatory process and licence decision.**

Responsibilities under Environment Act licence and for all connected leases, permits and licences should be identified in the licence. That is the licence should show who and which roles in the various departments are responsible for fulfilling these regulatory responsibilities..

Currently is is unclear what the responsibility of the Director of Compliance and Environmental Protection is, who he or she reports to, what these responsibilities and actions mean under the licence, etc. It is further unclear what the relationship is between the Director of Compliance and Environment Protection and the Director of Licensing (Director in the Act). Skepticism results, with confusion or frustration on the part of Manitobans affected by licences issued under the Act. Most conclude that there is no compliance or environment protection director or action.

We note that the Compliance section of the Manitoba Conservation website is mostly empty. A look at the staffing shows that only certain kinds of licences under the Environment Act are assumed to require Compliance. This is worse than blinding our system, this is not having a system at all. A review of the department's web pages to do with environment licences shows a clear pattern of ignoring the natural environment and all natural environment elements in compliance. This same attitude is reflected in both discussion papers regarding this review and updating of the Environment Act.

**Policy and Procedures Standards for Environment Act renewed and accessible**

Manitoba Conservation and Water Stewardship, and other departments of government with regulatory responsibility all have policy and procedures/standards for each regulatory responsibility. These policy and

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procedures exist throughout government. They are in need of being renewed, with staff training. Provincial governments near Manitoba keep all of these procedures on their intranet. What does Manitoba do? Where are these kept? Are they being ignored?

**Further public registry gaps, lacks, and fixes.**
Credibility is built on consistency and action. Improve regulation for the public registry.
**LIST:**

Make sure there is a list of all Environment Act licences in Manitoba. Does not exist today.

Make all Guidelines provided to proponents public and accessible. Make sure these have a date and government source on them.

Make sure the contents of each Environment Act proposal file are listed. This is not in place today, and many documents are being lost.

Make sure that we know how many licences were grandfathered in 1988 when the Act was proclaimed. This does not exist today.

Review the fulfillment of every class 2 and class 3 licence in the province. Decide what action if any is needed and enable that action by the licensee under the Act.

Make inspections, and review results public. This is an essential part of compliance.

Make sure that all class 2 and class 3 plants, mills, installations and infrastructure in Manitoba are inspected once a year.

Report publicly infractions, fines, compliance steps under any environment act licence.

Report publicly how that infraction was dealt with, what actions the licencee needs to take.

Report decision whether to remove the licence, or steps to fulfill the licence.
Post publicly all monitoring reports required under a licence.

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Make changes to the Environment Act to make sure that a requirement under the Act found to not be done can result in end of the licence.

Put steps to ensure annual inspection, identification of gaps in fulfillment the licence, and requirements to respond to the result of inspections and any needed changes, reporting, improvement etc.

See our comments about adding water use permits and all crown land lease information to this public registry, or building a similar online set of tools so that crown land lease, and all water permits, leases and licences are also posted on line. Manitoba is behind in its record keeping, and behind in its thinking in this regard.

**Technical Advisory Committee (TAC) needs standards, resources, and transparency. This section of the Act needs clarity and strengthening. We agree with the government discussion paper.**

- Public information posted as to who is on the TAC for any proposal and any review
- Members of the TAC sign their correspondence, email etc clearly
- Members of the TAC should be required to respond to every review that comes to their desk
- Moving forward to the next regulatory process step should be based on full response from the TAC
- TAC members required to provide reasons when they indicate there are no impacts expected from the proposal under the Act.
- TAC members provided the resources to review, read, and respond to proposals which they have a responsibility to review
- TAC members available to explain their conclusions when asked
- TAC correspondence consistently posted in the public registry
- Follow up and audit to see if TAC recommendations have been follow up
- Relationship between the Licensing Branch environment officer or other staff and the TAC members for a proposal under the Act should be clarified and understandable.
- Any meetings or discussions with the proponent by a member of the TAC about a proposal from that proponent should be part of reported..
- Templates and consistent reporting tools need to be in place for the TAC members.

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Resume posting public comments as they are received, and make sure that sets of public comments or TAC comments are accessible on a timely basis. Since online posting started these have become messy, and inaccessible. A list would help. This is one example of how the paper system was clearer, and more accessible. A procedures guide is needed for use of all staff working under the Act, and also anyone dealing with online tasks.

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**Environment Act content that needs strengthening or does not exist yet:**

- Public Registry
- Strengthen the language in the Intent section of the Act to reflect language about protecting the natural environment.
- Add to the Act enabling language regarding the Intent language regarding public policy.
- Technical Advisory Committee TAC – see above.
- Responsibilities of Officer under the Act
- Listing of all other regulatory permissions, leases, permits, agreements required for the proposal under the Act to be operational
- Responsibilities of the Director of Licensing and the Director of Compliance
- Environmental Effects Assessment standards
- Cumulative Effects standards and requirements
- Environment Act Proposal standards, including for an EA or EIS filing
- Time frame, start and end date for licences needed. Can be renewal of licence process for certain kinds of licences.
- Establish an independent agency or body to handle all licence appeals under the Act, including appeal or complaints about existing licences that may not be fulfilled.
- Mandate closure plans for all mills, mines, stations, and infrastructure in the public sector. Do the same for all private installations etc. Add language to the Act.
- Make all Guides, TAC comments, advisory or technical sources, references and steps to arrive at scoping document contents public in a timely way.
- Policy (or advance) environmental assessment procedures, as discussed in the Law Reform Commission discussion paper, should be enabled in the Act. These assessment are done in the planning stage, international standards exist, and often the assessment makes a difference in planning, identification of EIS contents, or specific risks etc.
- Regular inspection of all sites, installations, mills, plants, mines, stations etc. Public record of inspections and infractions etc

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- Posting of monitoring reports, mandating public access to all required monitoring, testing, reporting, assessing, etc during the life of a licence.
- This list is not to be taken as complete.

**Practices under the Act which need to end, requires changes in the Act, or regulations. Discretion needs to be reduced.**

**Alterations which are considered minor** have been made to Class 2 and Class 3 licences based on 30 year old licences. These have occurred with no public notification and review. No new mill, plant, mine, infrastructure should be added as minor to old licences that are grandfathered, or more than 10 years old.

**EG:** Tembec TMP Mill was issued a licence on a one page memo, based on the licence for the old mill. This resulted in no reviews, including of the new waste water system, which subsequently had a lot of spills and problems.

**EG:** TANCO was issued a licence for its new Mill as an extension of a 30 year old grandfathered licence for the Mine. Now there are problems with the Mine, which should be in a separate licence, and should be opened. The original licence was circumvented on an engineering basis to cause the problem with the Mine.

**EG:** Attempts were made to issue Louisiana Pacific a licence for its forest management plan based on the licence for its new Mill. This was overturned and a full review and hearing were held.

**EG:** Kelsey Generation Station was repeatedly updated (from one to seven turbines) without public notification, review, assessment, or hearings. Most of this occurred when Conawapa was not built in the 1990's. The proponent did not present its intentions to its owners and shareholders, etc.

New language in the Act to make sure no new installations, mills, mines, infrastructure, etc are licensed based on 30 year old grandfathered licences is needed. The definition of a *minor alteration* needs to be examined and improved so that no more occurrences like the ones above occur. Anything being connected to a grandfathered licence should require full review, and all regulatory steps. Discretion should be reduced in these licensing matters immediately, while changes to the Act are prepared.

**The Act has a section about Licences in Stages**

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This practice should be curtailed, and the language in the Act needs to be altered so that it is clear there are grandfathered staged licences, and new standards going forward.

**EG:** The Keeyask Generation Station infrastructure project for $ 400 M in public funds was licensed before there was any public information about the Keeyask Generation Station proposal. It was left out of the terms of reference for the review of the Keeyask Generation Station project, causing confusion during the CEC hearings. Essentially this is an invisible $ 400M use of public funds – where the project blocked full information about infrastructure being aired during the hearings.

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**EG:** McCains plant was issued a licence to prepare the infrastructure and site for the Plant before there was a proposal, any public review, hearings or recommendations about the licence.

The Manitoba NDP indicated in two recent provincial elections that they would end staged licensing. Now is the time to take this step. It is time to do a review of all staged licenses issued in the last 20 years, to see if they are in the public registry and linked to their main project, accessible, monitored etc.

**All development proposal elements should be part of the intended project.**

It seems when there is a lot of public land, waters and funds involved in a proposal under the Environment Act it is okay to throw other elements into a proposal, and licence those elements, whether they are actually part of the project.. Proponents must clearly identify, answer questions about and explain all elements in their proposal. Often affected communities are not notified and find out after the fact that infrastructure or an installation is already licensed.

It is time to make sure the standards for content in a proposal are clearer under the Act and in practice.

**EG:** The Wuskwatim Generation Transmission project proposal included: The Rall's Island sub station and the transmission line to The Pas and Rall's Island. It was extra transmission and an extra sub station for use to export energy to Saskatchewan. The station for the junction along the Wuskwatim transmission lines was also an element not directly related. It is worth noting that the Rall's

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Island station was not adequately flood proofed, and considerable public money was spent in the 2011 flood to protect it. Little attention was paid to the western transmission line and converter station during the regulatory process. Manitoba Hydro was unwilling to answer questions about it during IRs, or the hearings.

**EG:** The Bipole III Transmission project included: Two new converter stations, one in the north identified as being for Conawapa, and one east of Winnipeg, which has to date not been identified as to its purpose. This converter station is also an example of Staged Licensing, where the sectionalization project to acquire the land was licensed in 2009. Neither converter station was included in public open houses adequately. Confusion about the real purpose of the converter stations was evident during the Bipole III and the Keeyask CEC hearings.

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**Return to former practices under Act, Improve Act language.**
**Start with licence appeals.**

- all appeals of environment act licences should be public, posted in public registry as filed, with information as to their resolution also filed.
- any appeal that goes longer than one year should be subject to an interval report to appellants that is public, as to the status of the appeals(s).
- the minister should provide reasons for refusal of any appeal of any licence as per the Act.
- appeals to cabinet should be replaced by a tribunal that is independent, and public
- that tribunal could potentially handle all appeals under the Act.
- currently NOTHING in public registry about appeals of licences
- currently NOTHING in public registry about appeals to cabinet
- currently NOTHING in public registry about reasons for refused appeals.
- currently no clarity about the resolution of appeals of class 2 or class 3 licences if an appeal to cabinet is conducted, as these are secret.
- -currently those appellants who do not participate in an appeal to cabinet which is directed by Manitoba Justice, lose their appeal.
- The government discussion paper infers that any appeal of a Class 3 licence goes to cabinet. Then why have Class 2 licence decisions gone to cabinet also? Of course the discussion paper implies a variety of things about Class 2 proposals that are not actual practice. There were no appeals to cabinet prior to 2005-6. The Act must be updated and made clear.

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**Make the standards or Guide provided to developers for each kind of class 1, 2, and 3 licence proposal *public.* See references in Manitoba Conservation discussion paper.**

Currently the Licensing function and staff unit under the Act provide developers with **Guides** for filing their proposals. None of these are public. Scoping documents are released for public review with no information as to what they are based on, and how their contents were arrived at.

Two examples of proponent Guides in recent times are Peat Mining Guidelines and Wind Energy Project Guidelines, which were acquired and made public by Manitoba Wildlands. Undoubtedly there are many other Guidelines for developers. All of these should be posted on line, made public, dated, and have a referral name on them. They should also be part of the EIS or EA materials filed for Class 2 and 3 proposals.

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**Legal Agreements between proponent or developer and Manitoba government should be made public. Privileged information can be omitted. All information relevant to access to crown land and waters, permits/licences/leases under other Acts, and guarantees to the developer must be public.**

Certain of these agreements used to be in public registry files. These have disappeared.

**The language about review periods under the Act** needs language so they clearly do not include holidays. The Intent of the Act would indicate that Christmas, New Years, and periods of time when government staff are not available, and potentially the proponent's staff are not ***available must be omitted from review periods***. Actual business days would be a standard to use. Given the notification system is weak, attention needs to be given to the actual date of receipt of materials. A recent instance had a cabinet minister announcing that a review period had commenced, where it did not being until over 2 weeks later. The Act needs to accommodate the period of time needed for review and discussion by Officers and the Director prior to posting.

**All officers, directors, advisors with responsibilities under the Act should contribute to licence decisions that reflects combined knowledge, identified**

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**risks and effects, based on responsibilities from all Act mechanisms and officers.**

**That is, everyone with responsibility under the Act should be authorized and expected to make sure that the proponent actually abides by the Guide, scoping document, TAC comments about deficiencies or actions needed, EIS guidelines, and the proponent's own commitments.** Then the licence would more truly reflect the Intent of the Act, and the reality of the proposal. Soon standards for environmental assessment, cumulative assessment, and sustainability will need to be built into the Act, and considerations about whether to issue a licence.

**Manitoba is long overdue to write environment licences that agree with its own** advisors, TAC comments, public comments, Guides for the type of development and the commitments made by the proponent, including during CEC hearings. Today we have Guides which are handed to proponents in secret, EIS standards, EIS filings, formal Information Requests and answers, and the entire content of administrative tribunal hearings where people are all under oath. The pattern or discretionary activity under the Act though allows the officers and directors to ignore content from the regulator process. The Guides are ignored by the proponent and nothing is done. The EIS may or may not be based on the scoping document. There is no consequence to a proponent for not fulfilling the scoping document or EIS Guidelines. The answers to Information Requests from the proponent can be ignored. Often the TAC has advised steps, or requirements that are ignored in the licence when it is issued.

**More serious, the various commitments made in CEC hearings by the proponent under oath are often ignored** in the Environment Licence. Why does this happen? Are we lazy ? Do we seriously consider that the CEC report will include everything ? Given how many publicly paid staff attend CEC hearings it would be a straight forward exercise to track commitments or admissions by the proponent made during a hearing. Advising the Minister in this regard should be a responsibility of the government staff.

**State clearly in the Environment Act what a licence can be based on, what the sources and references for the content of the licence can be. Make sure the Licence does the same thing.**

**Manitoba Government Discussion Paper**

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A variety of the statements and assumptions in the government discussion paper are not accurate. That is they do not in fact reflect the actions, decisions, and processes under the Act over time or in recent years. See our comments on the discussion paper below. We should remind ourselves that protection of the environment may in face be secondary to environmental licensing in Manitoba. We can think of only one proposal that was rejected since 1988.

Manitoba Wildlands supports certain of the aims identified in the discussion paper. See our **Recommendations.**

**Executive Summary:**
What 'generic set of Environment Impact Statement guidelines' ? This terminology is simply not clear. Does it mean the secret Guides for proponents? Does it mean the EIS Guidelines that used to be arrived at through a public process for Class 2 and Class 3 proposals? Or is there something else that is not public?

We agree more developments must be brought into the Act, and that should be part of the review of the Class of Development mechanisms. It is unclear what the next step will be after this discussion paper. The class of development review should be another public review or at least an advisor process. It would be a mistake to start writing new Environment Act language without another stage of discussion given the absence of a first stage this time.

What does 'continue to develop innovative compliance tools that will increase accountability of the polluter' mean? We lack compliance tools under the Act.
We are not ensuring compliance if it involves public lands and waters. Certainly we do not have compliance tools with respect to climate change and continue to allow proponents to consider only the effect of climate change on their project while maintaining their project will not affect climate change or emissions etc.

We should be 'improving the public engagement process' to reflect the need for environmental protection, public participation, and new issues and activities and concerns that affect the environment and therefore the regulatory responsibilities under the Act. Someone who has never participated under the Act wrote some of these. There is a logistical error in the assumption in this language.

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'Facilitate a positive contribution to sustainability' is pretty language. It implies we are practicing sustainability in Manitoba. Perhaps a facts and science based policy assessment could be done to see if there is evidence of sustainability in Manitoba.

We have huge gaps in the environmental assessment and review processes in Manitoba. Duplication is an industry concern which translates to less accountability for the proponent. Is that what we want ?

The Page 3 chart leaves out steps which are referenced elsewhere in the discussion paper. Why? The chart also obscures the scoping document as replacement for EIS or EA standards. This of course varies for Class 2 and Class 3 development. Perhaps it would make sense to provide a chart that shows regulatory elements not currently part of the process, which the discussion paper seeks to put in place. See our comments about the lack of attention to the natural environment in our regulatory processes.

**Environmental Asssessment**

We do not have environmental effects assessment guidelines or standards in Manitoba. We have self assesment by the proponent based on one of scoping document and guidelines. These 'environmental act proposal report guidelines' are not posted, not public, and not relevant unless they are. Unless this is a reference to EIS Guidelines. There is no mention here of the instances where a scoping document process replaced steps to arrive at EIS Guidelines through a public process.

There is a failure here to acknowledge proposals that include federal and provincial responsibility and jurisdiction. We just finished a multi year process on one of these and have two more coming up. Why this silence in the discussion paper?

'Improved generic guidelines' are not enough. We need regulation and definition in the Act regarding environmental effects assessment, policy assessments, and cumulative effects. Terms like 'acceptable' and 'state of the art' show that no attention is being paid to two recent set of CEC hearings and the public funds, time and expertise on these subjects now on the record. Start with best practices language. Read the transcripts, and study the independent experts reports.

The chart on page 5 is problematic. Again, why not chart the process as it is now, and the process as it is envisioned?

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The page 6 comments about the TAC do not accurately reflect our experience in the last 4 or 5 years. See our comments about how to strengthen and make accountable the TAC process.

The reference to the public registry on Page 6 again underlines the lack of attention to the environmental licence *after it is issued*.

See our comments about the misleading content in the Class of Development chart on page 7. There are errors on this chart, in relation to the current Act. The text is also inaccurate in statements re Class 2 and Class 3 developments.

Page 8 contains several steps we agree with and have commented on in our recommendations.

Page 9 chart about Enforcement missed the point about Compliance and should show all the steps needed. See our comments and recommendations. Surely prevention is the key to environmental protection.

Page 10 seems to say that Environmental Protection Orders are only relevant for some kinds of licences. Does that mean compliance is only relevant for those same types of licences?

4 – Public Engagement
The examples listed are not in the public registry. In face there is no public record at all of these public consultations.

Revisionist tendencies in government discussion papers show hubris. **There is no new Lake Winnipeg Regulation.** Good to know there will be one. Perhaps it has already been written. Given the now 4 years and counting delay on the public process for review of Lake Winnipeg regulation it is quite odd to see reference to this new regulation in a discussion paper. This language leaves out review of EIS materials, ability to appeal licences etc.

• Prepared by Gaile Whelan Enns, Director, Manitoba Wildlands •.