MANITOBA WILDLANDS PUBLIC REGISTRY ASSESSMENT

Manitoba Wildlands (MWL) has reviewed the current Public Registry (PR) system under the Environment Act in Manitoba. While we acknowledge some improvements to the PR, we also suggests further improvements to the PR system. We have used categories/ headers to assist in providing our comments. A Summary of Recommendations starts on page 6. Various regulatory and licensing practices which are reflected in public registry file contents are not included in this assessment.

NOTIFICATION

Acknowledgements:
- EALB weekly PR update notice is an improvement. We would urge action to set up a subscription service or RSS for this notice, and any other postings on web pages that contain information regarding proposals under the Environment Act, or other Acts which hold authority regarding Manitoba's environment, especially crown lands and waters. The weekly bulletin can easily be expanded, and used in a variety of ways.
- The practice of making licensing information available through the website is also an improvement, but the practice could be greatly improved by posting clear, public and consistent practices, and by archiving materials. Currently there is no predictability as to what will be posted on the web page, for how long, etc.
- The creation of public-registry sub-locations, such as the one at Manitoba Keewatinowi Okimakanak (MKO) offices in Thompson, and municipality offices near projects is a good start, however this should be expanded on.

Recommendations for improvements:
- Posting a file or memo on the EALB web pages is *not* notification. Returning to posting a schedule for each proceeding under the Act in the registry file would help solve this problem, as these could also become part of the weekly bulletin.
- Adding a subscription service to the weekly update would help. That weekly update would need to include all scheduled steps regarding any proposal/procededing under the Act active at the time. Going beyond listing documents in the weekly bulletin would greatly increase transparency.
- There is a clear need to demonstrate and act on the need for EALB to have additional web support, storage, and services. This branch of government is not the only one where archives, storage, and longer time lines are needed for documents and materials posted on Manitoba government web sites.
- For those affected or interested citizens without Internet access we suggest you consider a mail based subscription service or weekly update. All public registry locations in Manitoba could easily post the paper version of the weekly PR bulletin.
- A focus group review of the public registry system, and EALB website to see how it could be made more accessible to the general public is recommended.
- Confirmation from the branch and director that the public registry under the Act is the paper registry means there are steps needed to make the Registry accessible.

We suggest adding more rural public registries locations to the system, and consider approaching First Nations organizations (Southern Chiefs Organization or Manitoba Assembly of Chiefs) to host a public registry location.

- Each public registry location should be complete, containing all public registry files, not simply those deemed by EALB staff to be of local importance. It is not uncommon for people to reside in one area of the province but own land or a business in another area of the province. The basis for any decisions to withhold certain materials from certain registries should be public.
- Notification through newspaper ads is no longer adequate in today's world. Many communities no longer have a weekly or daily paper, and people are eschewing traditional print media in favour of online media. Notification techniques need to be updated to meet this modern reality. Discretionary decisions as to which newspapers will have an ad placed are not sufficient. Winnipeg newspapers that go to communities across the province are being bypassed when they should be used for notification ads.

CROSS-REFERENCING & PUBLIC REGISTRY FILES

Acknowledgements:
- The public registry location at 123 Main is the responsibility of Manitoba Conservation, but cross-referencing between government information sources is vital to making information about proposals under the Act accessible. This means the public registry file would indicate *where else there is public information* regarding a proposal or development – both paper and on line sources.

Recommendations for improvements:
- Establishing a Manitoba Water Stewardship department should in no way have reduced what is in the pubic registry. Manitoba Water Stewardship posting online of materials regarding proposals, which may require steps under more than one Act, is *not* a public registry. Integrating these "registries" into a single authoritative public registry would be the best means to serve public access, notification and ability to participate. Forcing private citizens, organizations, and government departments to consult various registries and web pages makes the task of obtaining information, which is public in the first place, onerous. We question whether the current situation meets tests of fairness, reasonableness, etc.
- Once the Conservation minister refers a proposal from EALB to the Clean Environment Commission (CEC) the public EALB proceeding stops until the CEC proceedings are done. If a matter is referred to the CEC a note should be placed in the corresponding public registry indicating how to access information. The reference from the Minister to the CEC should be in the public registry file.
- Simply placing the final report of the CEC in the public registry is not enough. We would observe that waits of as much as a year before a CEC report is made public further necessitates clarity on access to public information.
- One of the weaknesses of the Environment Act concerns the standards the CEC should be meeting in terms of access to information. To all intents and purposes there is no public registry for CEC proceedings. The CEC web site routinely takes

materials down without indicating how to access them. A listing of CEC materials could be maintained in the public registry; OR the CEC could provide information as to access to materials from hearings, or investigations – on their web site. Standards as to retention of CEC materials on line and in accessible paper files need updating.

- Appeals of EALB licenses elevate the matter to the minister, but records and materials from these appeals should be kept in the appropriate registry file.
- An effort needs to be made to *note for the public and government departments* all projects issued licenses through older statutes that preceded the *Environment Act*. Those which did not require a license or which hold an old permit should require a licensing process with public review for any significant or substantial expansion, change, or upgrades.
- We understand that EALB may not know of all instances, but the situation needs to be carefully safeguarded to avoid any abuse, or avoidance by proponents of licensing steps. It is vital to have a record of all "grandfathered projects". We note the new Tembec mill in Pine Falls in an example of "grandfathering" where no EA, no public review occurred.
- Where a project is a public work we assume the Manitoba government would want to make sure the public has access to information which affects their communities, and for any project paid for with public funds. Currently this is not happening.
- MWL recommends clear timing as to when documents are placed in the public registry, and an end to holding back all public comments until the comments deadline is passed. There need to be clear standards on: which public comments are included in summary documents, discretionary decisions as to when documents are placed in public registry file or posted, and discretionary decisions as to when documents are no longer on the web site.
- Return to using the public registry for lands planning, and other reviews as part of the government's commitment to the COSDI report recommendations such as: parks plans, watershed plans (which need public review), traditional lands plans, new lands policies, and all proposed regulations for Environment Act.
- Having *public* standards and a *guide for the operation of the registry* to assist all users and those affected by proposals under the environmental Act.

INFORMATION FORMATS

Acknowledgements:
- Confirmation that the paper registry at 123 Main St., not the website postings, is the authoritative public registry under the Environment Act, and for other public policy uses, should drive needed improvements.
- We understand that the EALB aims to return to having tables/lists of contents for PR files. Certain tables of contents are now missing from files, and certain documents that were in the files are also now missing. These instances underline the need for a list of contents for public registry files.

Recommendations for improvements:
- DVD copies of PR file contents need to be made available to the public upon request, especially when charts, maps, and technical diagrams are included. DVDs should be required as part of a proponent's filing.
- Manitoba Conservation reduces its holdings of materials for a particular license to one copy in the province. This happens despite long-term licenses which are up for extension or renewal every 10 or 20 years., Access to original materials for previous licensing process is an essential part of any new or renewed long term license review. We suggest that a variety of options exist to solve this problem. The proponent should provide a complete digital copy of materials for a proposal. It can become part of the public registry file, and be available when a license ends, or a renewal is being reviewed etc. The test would be whether department staff have better or more information and materials than what is filed in the PR file, as these should be the same documents, and access to information.
- A simple and clear public guide to the PR library would make it easier for the public to access the library and public registry at 123 Main, and other locations across Manitoba. Our interns found many instances of materials not being located anywhere near the actual public registry file, no listing of the file contents available, and department staff having a different idea of what was in certain public registry files *than actually was available*. The guide needs to include the standards for both the paper registry and the on line postings of partial contents of PR files, with explanations and cross-referencing methods included.
- There is still a need to provide tables of contents for all files, including historical files. This includes updating contents listing for files, and beginning to establish a public listing of all contents when a public registry file is opened. Lists that have gone missing provide a real challenge that must be addressed, including the potential need to rebuild a PR file.
- Some proponents maintain libraries or resource centres that contain all their technical and licensing information. Other proponents also post information on their own web sites while going through the stages of public review, hearings, licensing, appeals etc. The public registry file can easily contain notification of these sources of project information by requiring it be included on the proposal filed under the Act.
- The paper master list for the registry located at 123 Main St. is outdated and an up to date master list or record needs to be maintained. We understand there is a need to update the present software, but an up to date registry master list is key for easy public access, so updating the software should be a priority, and not an excuse for the lack of a master list. We suggest that the software needed is likely available in another branch of Manitoba Conservation, or the Manitoba Government.
- The master list will need a legend or guide so users can understand why the files are numbered, and named the way they are. This is especially important so *that all proposals under the Act, and licenses from the same proponent are identifiable*. The real need is for a relational database to reflect the contents of the pubic registry – historic, repeat licenses, proponents with various licenses, any other Act involved in 'licensing', etc.
- It is important for Manitoba to achieve minimum compliance and access to information compared to other Canadian jurisdictions' public registries.

DISCRETIONARY DECISIONS VS. *PUBLIC* POLICY

Acknowledgements:
- There needs to be clear and consistent standards regarding how, when, what, and where information is placed in Manitoba's public registry files. Predictability, consistent steps in processing a proposal, and electronic steps for materials too large or complicated for the online posting are among the standards that need attention.
- The Government of Manitoba website managers need to provide EALB the appropriate amount of memory to host and archive its licensing webpages with a large number of documents. We hope that the concerns raised here will help in this matter.

Recommendation/questions for improvements:
- When exactly does a registry file start? We ask because there are numerous proposals (particularly public works projects) that have been "in the works" for years, but which have yet to apply for a license under the *Environment Act*. We submit a public registry listing should provide advance notification of intent to file a proposal. Also it is long overdue for the licensing branch to require (in scoping document, EIS standards, and procedures) a listing of all previous technical work products, while establishing improved access to technical work. This is particularly urgent when a government entity is applying to the Manitoba government for a license for a public works project.
- If a proponent submits an EA or proposal that was rejected for non compliance with the provisions in the *Environment Act*, or any other statute for that matter, this rejected EA or proposal should go into the PR file. Starting the PR file over again with a modified EA or proposal that meets all requirements is not good enough, as this misleads the public. There are examples of this situation with Manitoba forest companies. All materials submitted to government need to be in the file. All government reviews of filings or comments on a proposal from a proponent also need to be in the file. This practice was consistent for the first 12 – 14 years of the Act, depending on the nature of the proposal. This practice needs to be resumed.
- Who is on the Technical Advisory Committee (TAC) and how this is determined? The guide to the registry needs to include an explanation of the TAC.
- The time-lag before proposals and/or comments received are placed in the PR system needs to based on *public* PR guidelines. (Private citizens and organizations undoubtedly take considerable time and effort in drafting their public comments. Courtesy and reasonable access to public information standards dictate that these comments should therefore be posted in a reasonable, and easily discernible amount of time.) Discretionary decisions that withhold or block access to other public comments are contrary to the intent of the Act, and may impact standards for fairness.

ENVIRONMENTAL ASSESSMENT (EA) STANDARDS, SCOPING DOCUMENTS & LEGAL AGREEMENTS

Recommendations for improvements:
- We also recommend that Principles and Guidelines set out in schedule A & B of the *Sustainable Development Act* (C.C.S.M c. 61) be incorporated into all future Environmental Impact Statement guidelines, as was previously done in the past.
- Also all legal agreements between proponent companies and the Manitoba Government should be placed in the PR, as was previously done in the past.
- Scoping documents in fact block the public participation in establishing the Standards for assessment of a proposal under the act, as these Scoping standards are being arrived at in secret with the proponent. This is a significant change from previous practices, and should be reversed.

SUMMARY OF RECOMMENDATIONS
In closing, we reiterate certain suggestions for improvement of the PR system.

1) A clear and publicly accessible guide to the PR system that makes the standards of what is posted, when, how and why clear
2) More proactive notice of when proposals are filed, or when PR files are updated.
3) Ensure that sub-registry locations contain all PR files, not simply those deemed to be of local import
4) More public registry sub-locations in more locations, with a particular interest in engaging aboriginal organizations.
5) An improved webpage with more storage capacity and one that will be made user-friendlier through focus groups.
6) More proactive notice of PR updates through the use of an online and/or mail based subscription service, or RSS.
7) Integration of the PR system with the water stewardship "registry", Parks and Natural areas consultations, CEC hearing and reports, and other pertinent sources of information regarding planning processes in Manitoba, so PR files indicate location of all pertinent information.
8) Inclusion of "grandfathered" projects into the PR system
9) An inventory for every PR file, with missing ones replaced.
10) An updated master list of PR files at the 123 Main Registry and other sub-registry locations.
11) The inclusion of all PR files at all PR locations
12) Clear, consistent, and publicly accessible guidelines and polices for the PR system.
13) Inclusion of the principles and guidelines of the *Sustainable Development Act* in all future EAs, with clear requirements for the proponent with respect to upholding Manitoba public policy and regulatory framework included.
14) Inclusion of the legal agreements between government and the proponent in all PR files.

15) Inclusion of all TAC comments, and review comments from government departments and entities in the PR file needs to resume.

AMENDMENTS TO THE ACT

We recommend the *Manitoba Environment Act* be reviewed for amendments and new regulations. The creation of an Environmental Assessment Regulation would deal with many of the problems identified such as: clear standards and timelines, the posting of rejected EAs, and the early inclusion in the PR of public works projects which remain "in the works" for years. A regulation could also stipulate what the contents of a PR file should be, thereby requiring a return to many former practices for PR file contents. Certainly updated regulations would require that a full listing of PR files, and their contents be maintained.

Likewise a public registry regulation, or an enhanced public registry section in the Act, would establish clear procedures, a system for the identification of file contents, and options that refer PR users to a range of files carried by other departments, and through other processes. Consistency and record keeping that benefits decision-making would result.

These changes to the Act would help fulfill COSDI recommendations and fulfill NDP 1999, 2003 and 2007 election commitments.