

May 23, 2006

Hon Stan Struthers
Minister of Conservation
Room 330 Legislative Building
Winnipeg, Manitoba
R3C 0V8

Ms Tracy Braun
Director, Environmental Assessment & Licensing Branch
Manitoba Conservation
Suite 160, 123 Main Street
Winnipeg, Manitoba
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Dear Minister and Director:

**RE: Public Review of Scoping Document
– Oly West Environment Act Proposal**

We are writing to respond to the posting of the scoping document provided to Oly West by Manitoba Conservation, and available for public comment. It is our understanding that this scoping document, or the final version of the scoping document, will be the basis for requirements for the company when it files its Environment Act proposal and Environmental Impact Statement. Steps to notify and make public the final version of the scoping document are not evident at this time.

We recommend that Manitoba Conservation be clear about documents that will be kept public, and be in the public registry – concerning the Oly West review process. While it is positive to see occasional on line posting of documents, to date the department has not consistently stayed with posting environmental review documents, comments, and reports when they use on line ‘public registry’ functions. We end up then with a mixed situation, where some information is in the official public registry under the Act, and other documents and information (with some overlap) are posted on line by the department. This situation occurred for the Wuskwatim projects, and was never corrected.

The 1999 COSDI recommendations regarding the public registry, which this Manitoba government endorsed, have not yet been fulfilled. Also there are no procedures or predictable standards for a ‘Public Registry Index’ provided on line. There is no guarantee that public comments on this scoping document will be posted on line, for instance, or in the public registry.

There is also no guarantee that responses from the proponent to comments on the scoping document will be required, public, or posted. These steps have been standard in similar Environment Act reviews for mills, and other developments in Manitoba. We would ask Manitoba Conservation and the director of Approvals under the Environment Act to amend the information on the Public Registry Index on line immediately to indicate what will be posted on line and what will be placed in the public registry and whether these sets of information are the same.

A primary concern regarding Oly West development intentions centres on the business agreement signed, with subsidies in place, and two levels of government agreeing to this development before there has been any opportunity for public comment, or any public information. We would suggest that this approach is dated, high risk to standards for environmental licensing, and basically disrespectful to communities of concern. It also can increase business risk for the proponent. High stakes trade offs with no clear standards or basis for business decisions, no transparency, and free ticket / for show environmental reviews prior to guaranteed licensing will tarnish Manitoba's reputation.

We would note that Oly West may not understand the Clean Environment Commission's role or has been misled as to the process under Manitoba's Environment Act. Please review the recent newspaper editorial from the company as printed in the Winnipeg Free Press. Oly West thinks or would like us to think that the CEC decides about environmental licenses, and that the CEC conducts the environmental review. Neither is so. It is important for Manitoba Conservation to make sure that the proponent has clear information about the environmental licensing process in Manitoba.

We do need to move rapidly to transparency and public criteria for the *reference* from the Conservation Minister to the CEC when the Minister directs that environmental hearings be held and indicates the basis for those hearings. While we have confirmation of an intent to hold hearings for the Oly West project, the current situation means that there is no standard, no predictability, and no guarantee of a connection between the scoping document, the public review of the scoping document, the Environment Act proposal to be filed by Oly West, the EIS requirements, and the terms of reference to be issued by the Minister for these hearings.

Based on over twelve years of responding to Environment Act reviews of EIS Guidelines, EIS statements, responses from proponents, and participation in CEC hearings through the same period of time, we would point out that this scoping document has imbedded several shifts in operations or public policy for environmental review. The rationale for these shifts or changes are not provided. In fact the scoping document is provided as if these procedures are the norm. Notice to the public, and identification of such changes is appropriate in any public hearing, public participation or administrative law undertaking.

We would also point out that the notice of Draft Scoping document does not clearly state that there are different environment licenses and permits potentially needed for this potential development.

It is standard practice that the make up of a joint federal / provincial Technical Advisory Committee (TAC) is posted or filed in the public registry and available to the public as soon as any public review process starts. The TAC list should be in the on line Public Registry Index also.

Our comments, by page number inside the Scoping document, follow:

• **Page two**

It is immediately unclear how the Environmental Assessment Guidelines will be finalized and made public. Also it is unfortunate that despite thorough language there is no explanation in this public review document of what a ‘trigger’ under the Canadian Environmental Assessment Act is.

We would caution the proponent regarding consultations. The draft scoping document refers to the company consulting with Aboriginal communities. A quick scan of definitions and standards for consultation with Aboriginal Peoples in Canada, as defined by the courts clearly indicate that our government, or governments - federal and provincial - may have a basis for consultation with Aboriginal Peoples regarding this proposal, and that government to government consultation may be needed. Any steps that Oly West takes would be providing information, identifying concerns, and answering questions of Aboriginal communities.

Page three

There is nothing here to indicate that the results of ‘consultations’ or response to public concerns about the proposal will be reported publicly, as is the standard during environmental assessments and public reviews in Manitoba under the Environment Act.

Environment Act Process (page three and four)

There is no information here about the public review period for the Proposal and Environmental Assessment, to be filed together apparently, by the proponent. This means, see comment above, that there is no transparency or guarantee of response from the proponent or the director of approvals to the public review of the scoping document, or clear information about public review of the Proposal and the Environmental Assessment. These pages do not tell us what will be public. Again these steps are routine during Environment Act reviews in Manitoba. If Manitoba Conservation wishes to change a variety of its policies and procedures under Environment Act regulations we would strongly advise that it first let the public know, and inquire as to accessibility, applicability etc. (We would remind that

there is a review of the Manitoba Clean Environment Commission's operation and procedures especially in dealing with the public waiting for action.)

There is a discretionary decision intended as to the length of time that the public will have to review the Proposal and Environmental Assessment. The scoping document again does not make clear whether the results of the TAC review will be available to the public before the public review period. Also, so far the scoping document does not indicate *all* comments will be in the public registry, or the length of the public review period. We would caution that this public review period should be at least 60 days, and that procedures for access to information must be made clearer before it begins.

It is necessary to return to the usual process where review comments from the TAC, and from government of Manitoba departments or branches were posted in the public registry. The first significant exception in this procedure was the Wuskwatim Projects proposal from Manitoba Hydro.

We would also caution that we are in May and that public review periods that include summer holidays, long weekends, and period when government staff are less available in their offices are reasons for a long and adequate public review period for this Proposal and EA.

Incomplete or deficient Environmental Assessment in response to Environmental Assessment Guidelines involves direction that is public, from the director of approvals, to the Proponent, with public filing of the required information. This scoping document skips these steps, see page five comments below.

At the bottom of Page Three (we note that clauses are not numbered) there is a reference to having to register if you are likely to be affected by the Proposal, in order to speak at the CEC hearings. There is no precedent in Manitoba Environment Act reviews and hearings, or licensing where a member of the public is barred from speaking at CEC hearings, during the hearings. CEC hearings have always been open, and members of the public have been able to speak, or ask questions. There are numerous public references for the commitments of this government to making environmental licensing and all manner of public hearings more open and accessible.

This kind of significant precedent setting change to how Environment Act reviews and hearings are conducted in Manitoba essentially closes hearings to the public, other than as observers. This scoping document suggests, without clear timelines or assurances that the Proposal and EA will have been reviewed and results of that review made public that people and organizations must register to participate, by a certain unclear date. The result of this change in procedures also appears to intend that there will be *less* public participation in the hearings. There is also no precedent to only allow registered public participants to speak or ask questions in a hearing under the Manitoba Environment Act.

Attempts of this sort were made during the hearings for the Winnipeg Floodway hearings.

The steps are out of order, made less accessible, and the Oly West process under the Environment Act is being used to considerably change the procedures under the Act.

Page four

We have a disconnect in the scoping document between advice to the minister from the CEC after hearings and its report being finalized, and the decision to issue a license. Clearly the minister decides about issuing a license, and the director of approvals acts for the minister. This is not clear in the scoping document. Perhaps the Director is going to start acting for Executive Council, or as Minister under the Act. The current language in the scoping document contradicts the practice and procedures under the Act, overtime.

Page Five

There continues to be no information as to the results of the public review of the scoping document, access to the results, and finalizing the draft Environmental Assessment Guidelines within it.

There is also a presumption on page five that if the Proponent does not have some of the information it needs to file its Proposal and Environmental Assessment, then it can be filed after the license is issued. There has never been any similar assumption inside EIS or EA Guidelines under Manitoba's Environment Act. This scoping document says that it is okay to file deficient environmental information, because you are going to receive your license anyway, and can provide that information later – including when it may not be made public.

Summary

At every stage of this scoping document it is unclear what information will be made public, what will be in the public registry and when, and what will be posted on the Index Public Registry on line.

Several usual practices under Manitoba's Environment Act are being arbitrarily combined or omitted from the review and licensing steps under the Act, with this scoping document being the mechanism.

References to revising the License for the Oly West plant based on information filed after the License is issued ignore the usual steps followed under the Environment Act, with regard to Appeals, and public posting of those appeals, and the usual steps under the Act in responding to appeals of the License. Appeals can be filed by members of the public or the Proponent, and have included a public review period, with comments being made public. There is also no information in the scoping document about how deficiencies in what the Proponent filed will be identified and corrected.

Pages Six to Nineteen

There is a significance absence in the draft guidelines - impacts on human health are not listed under criteria and requirements where human health risks should be considered.

The standard in self assessment are weak, Oly West is being informed that they only need to report on probable impacts or certain impacts. The standard for EA in Canada, and presumably in Manitoba, is for the Proponent to be expected to respond to and discuss *potential* environmental impacts.

Obvious Deficiencies in Scoping Document

Manitoba is party to a variety of standards and requirements in terms of air quality, soil quality or contamination, water quality, and specific allowable levels of contaminants in water, air, blood, soil, waste water, etc etc. Manitoba also has regulations, public policy, and bi lateral agreements regarding many of the substances, elements, and requirements expected in the Proposal and EA to be filed by Oly West.

None of these policies, guidelines, or standards are provided in the scoping document. Essentially this means that Manitoba Conservation has failed to provide, or require the company in question to fulfill existing public policy and regulatory standards regarding the planning and assessment of this proposed plant.

There is no precedent under Manitoba's Environment Act for this kind of deficiency in EIS/ or EA Guidelines – as they have been included in this particular scoping document.

There is also no precedent, as mentioned above, for closed hearings, where the public must register months before hand, or they will be unable to participate in the hearing.

It is also evident that the geographic scope for the review is narrow, and seems to avoid including any factors regarding the animals that will be processed. We would point out that when Manitoba licenses a forestry mill and woodlands operation there is a full review of what will go through the mill or plant. That needs to happen in this instance also. It is especially disappointing when this discussion is about putting an animal processing plant inside an urban centre, that all the environmental assessment standards regarding the source of the animals, and the effects of those animals being raised, transported, slaughtered, and processed in Manitoba have essentially been left out of these draft Guidelines, inside this draft scoping document.

The lack of clarity regarding the sequence in public review under the Act, and access to information tells us that public processes under the Environment Act are under significant threat and risk.



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It is also fairly odd that only \$500 is required as a fee with the environmental proposal from this company.

Yours truly

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Director
Manitoba Wildlands