

October 12, 2005

Mr. Dwight Williamson  
Director, Manitoba Water Stewardship  
Water Science and Management Branch  
123 Main Street  
Winnipeg, Manitoba R3C 1A5

Dear Mr. Williamson;

**Re: Comments – Regulation Governing Water Quality Management Zones for Nutrients  
(*Water Protection Act*)**

This letter constitutes Manitoba Wildlands' formal comments on the Manitoba Water Stewardship July 20, 2005 consultation document '*Regulation Under the Manitoba Water Protection Act – Consultation Document for Initial Review Respecting Water Quality Management Zones for Nutrients*'. Please place this letter in the public registry file, along with the other public comments on this document. As of this date we have been informed by department staff that the September 30<sup>th</sup> deadline for comments has been extended. We do not have information as to the new deadline.

We note that to date, no public registry file has been established for the *Water Protection Act* and the process to develop regulations under the *Act*. This is despite the *Act* itself stating under Section 38 that "a draft of each proposed regulation or amendment to a regulation under this *Act*" must be placed in the public registry file. As the *Water Quality Management Zones for Nutrients Consultation Document* can be considered to be the first draft of the regulation, this file should have already been established. The fact that this is a public consultation (as stated under Section 39(3) of the *Act*) means that all comments from the public should be publicly accessible and transparent and we assume (as above) that these comments will also be placed in the public registry file.

Prior to making comments on the content of the *Water Quality Management Zones for Nutrients Consultation Document*, we wish to register our concerns once again regarding legislative compliance and the relationship between the new *Water Protection Act* and the new *Planning Act*. We raised this issue during the legislative hearings for the *Water Protection Act*, but our concerns remain the same. Specifically, we are concerned that Sections 201 and 202 of the new *Planning Act* require that development by-laws and zoning by-laws be in place by January 1, 2008. Although there is a provision in the *Planning Act* (Section 217) that requires new development plans and amendments/re-enactments of development plan by-laws to consider regulations and watershed management plans under the *Water Protection Act*, this will be meaningless if all activities under the *Planning Act* come into force prior to regulations and watershed management plans being completed. Without a mechanism to require the

*Water Protection Act* to supercede the *Planning Act*, protection of Manitoba's water sources and the objectives of nutrient reductions in Lake Winnipeg will be impossible to realize with the *Water Protection Act*, and its regulations rendered a public relations exercise that will not result in any real changes to land use in water protection in the province.

This concern is real; the *Water Quality Management Zones for Nutrients Consultation Document* is only the first stage of consultation on one regulation under the *Water Protection Act*. There are several other regulation development processes intended for this *Act*, which means that the *Act* will not be fully operational for years. The new *Planning Act* will have been in force and functioning for some time by the time that the *Water Protection Act* has completed the process to develop regulations and establish watershed planning processes. We wish to receive some assurance that the scenario we have outlined above will not become the reality in terms of these two *Acts*.

Below are Manitoba Wildlands' comments on the *Water Quality Management Zones for Nutrients consultation document*.

### **Re: Criteria for Categorization of Lands into the Four Water Quality Management Zones for Nutrients**

Our main comment regarding the criteria used to categorize lands into the four Water Quality Management Zones for Nutrients is that a system designed to consider soil capability in an agricultural context should not be the sole basis for categorization of lands into Zones for Nutrients when the stated purpose of both the *Water Protection Act* and the proposed regulation is **protection of water**.

The *Water Quality Management Zones for Nutrients Consultation Document* states that (emphasis added) “[t]he main purpose of this regulation is to **protect water from nutrients that may arise from the over-application of fertilizers, animal manure, and municipal wastewater sludge** to adjacent lands beyond the amounts reasonably required for the benefit of crops and other plants within the immediate growing season.”

We are not advocating that the Canada Land Inventory Soil Capability Classification for Agriculture be excluded and its criteria dropped. However, the criteria for categorization of lands should include and emphasize analysis of surface water sensitivity and groundwater sensitivity – from an ecological standpoint, not just an agricultural-standpoint, given the stated purpose of the regulation. Indeed, the purpose of the *Act* and the proposed regulation demand that surface and groundwater sensitivity carry more weight than agricultural capacity and potential in terms of defining water quality management zones for nutrients. Analysis that does not take into account ground and surface water sensitivity is unacceptable. Development of a system for land categorization should be undertaken or at the very least reviewed by a committee or team of independent scientists and professionals that includes an ecologist.

Although we do not expect or desire the majority of Manitoba's agriculturally productive lands be categorized as Zone 4, where no application of nitrogen and phosphorus can occur, we feel that the proposed categorization will not adequately protect surface and groundwater, particularly in situations where intensive livestock operations are concerned.

For instance, under the proposed classification system, much of the Red River Valley is zoned such that ILOs will be permitted, despite the presence of the rivers (and lakes, water bodies), which we know are subject to flooding, inundation, and the drainage of which is responsible for a significant proportion of nutrients being carried into Lake Winnipeg. Municipal authorities in the Red River Valley are aware of ground water sensitivity, and other ecological and social factors regarding ILOs in the Valley. We would remind the Water Stewardship Department that the Valley is full of homes, children, businesses and a quality of life that is threatened by ILOs. Problems in the RM of Ritchot in the last 8 years alone, prove the risks to ground water and water bodies from this kind of agricultural bias for decisions. We would suggest that both social and ecological factors are being ignored – or worse, trampled – in this zoning. Perhaps the need is to also take account of more than one kind of economic or industry criteria. To think of the Red River Valley as simply agricultural also ignores the rest of the economy!

#### **Re: Schedule D, Part B – Buffer Setback Distances from Water and Related Nitrogen and Phosphorus Application Rates for Zone 4**

We are deeply concerned that buffer zones for water bodies have been "derived with best professional judgments from the Manitoba Farm Practices Guidelines for application of animal manure to agricultural lands" and that the maximum buffer in Schedule D, Part B is 30m – for water bodies used directly as sources of human drinking water.

Once again, because the Farm Practices Guidelines are oriented towards agricultural production, we do not believe they are an appropriate standard from an ecological standpoint. At best they could be used as a starting point for discussion as the minimum buffer zones. The stated purpose of the Water Protection Act for this regulation, and the precautionary principle, however, require that protecting our water bodies go beyond the minimum standard and take into account sensitivities from an ecological perspective. These buffer zones should also be developed, or at least reviewed and approved, by a committee or team of independent scientists and professionals that includes an ecologist.

To illustrate our concerns regarding the Farm Practices Guidelines, it is our understanding that these Guidelines could allow 8000 hogs to live just 300m from a residence. We are sure no one in Water Stewardship Manitoba would want manure applied 300 meters from his or her kitchen window. These guidelines are clearly not adequate from a human health and well-being standpoint, and it is unlikely they would stand up to review by ecological experts. In the Red River Valley, with both significant south east and northwest winds, 300m – less than a kilometer – is too close to a home for 8000 hogs, and their above ground manure. Perhaps the department can explain in the next round of review how other Environment Act regulations will protect both water and air quality in relation to the regulations

intended under this Act. In short, we need to have an ecological, social, and economic approach to protecting the natural resources of the Valley. Air quality cannot be ignored.

The fact that scientific literature was also considered in defining buffer zones is commendable, but since there is no information as to what literature was considered, it is impossible to know whether the relevant ecological literature on appropriate buffer zones for water bodies was consulted.

**Re: Nitrogen Application Rates – Exceptions for Irrigated Potatoes**

The inclusion of potato crops in Zone 1 (least restrictions for nutrient application), despite the fact that all other crops in that class are treated as Zone 2 contradicts the use of scientific basis for categorization of lands. This appears to be a political decision, as there is no justification for this exception. Certainly, there is no ecological justification for such special exemption of this hugely water-intensive crop. The decision is also in contradiction of the stated intent of the *Act* and the proposed regulation to protect water. No exemption for potato crops should be permitted.

**Re: Maps and Data**

We are providing some constructive comments regarding maps and data with the intention of improved communication and information products. The information base for the current and future activities under the *Water Protection Act*, such as watershed planning and the development of this regulation, will be an essential ingredient in ensuring the success of protecting water in this province. We hope that you will take our comments seriously, as quality of information, as well as transparency and accessibility are directly related to the quality of public interest and input into these initiatives.

The maps included in the *Water Quality Management Zones for Nutrients Consultation Document* are not dated, source for data is not indicated and not all of them have a legend. We are aware that the legend is the same for all maps, but if a page is excerpted from the document, the legend will be lost for some maps; it is important for each one to include a legend and a date.

In the interests of transparency, we urge the Department of Water Stewardship to make the actual data and GIS shape files used to create each of these maps publicly available by placing these on the departmental website or the Manitoba Lands Initiative site and accessible for use and downloading. We would note that in order to do this our advice above concerning date, source, and legend would need to be acted on.

Yours truly,

Gaile Whelan Enns  
Director, Manitoba Wildlands  
cc. Hon. Steve Ashton