

September 30, 2014

Tracey Braun, Director
Environmental Approvals Branch
Manitoba Conservation and Water Stewardship
Box 38, 200 Saulteaux Crescent
Winnipeg, Manitoba R3J 3W3

via e-mail to: publicregistry@gov.mb.ca

Dear Ms. Braun:

Re: Manitoba Environment Act Consultation: The Road to Enhancing Environmental Protection in Manitoba

The Canadian Association of Petroleum Producers (CAPP) and the Explorers and Producers Association of Canada (EPAC) appreciate the opportunity to provide feedback regarding Manitoba's Environment Act.

The associations welcome the premise of a long-term strategic plan addressing environmental protection and appreciate the ability to provide comments as the government reviews *The Environment Act (the "Act")*. We support the principle of updating the existing Act.

Canada's oil and gas industry is very capital intensive and relies on strong signals that Manitoba welcomes and supports long term investment from our sector. A sound fiscal regime and clear policy and regulatory direction are important in terms of a competitive environment for industry to invest and operate in a sustained fashion. This includes:

- Alignment and integration of policy initiatives that strike a balance across policies for oil and gas resource development that signals Manitoba can enable competitive development of oil and gas resources; and
- Analysis that establishes cost implications of modernization of the Act and apply mitigative measures to assure sector competitiveness if required.

We particularly draw your attention to concerns we have in two areas:

- 1) The project by project review and approval process contemplated in proposed changes to the Act is unlikely to prove the best approach to manage high level policy outcomes such as climate change mitigation or cumulative effects management; and

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- 2) The oil and gas industry in Manitoba has an established framework of effective project review and licensing as well as ongoing regulatory oversight under the current regime. Thus in our view proposals to consider adding an additional project review and approval process for the oil and gas industry is not warranted and could result in an unnecessary and costly regulatory burden.

Working with our respective member company representatives, CAPP and EPAC also offer specific observations and responses pursuant to the Act consultation paper found online. Those responses can be found appended to this letter.

As always, we appreciate the opportunity to offer our feedback into consultation processes on policy and regulatory matters that impact our industry. We welcome a further meeting to elaborate on various points we have raised. Please feel free to contact either one of us. We can be reached at tricia.donnelly@capp.ca or (403) 267-1121 or Gary Leach at gleach@explorersandproducers.ca (403) 444-0115.

Sincerely,



Gary Leach
President
EPAC



Tricia Donnelly
Manager, Manitoba Regulatory Affairs
CAPP

Cc Manitoba operators
Keith Lowdon, Petroleum Branch, Manitoba Mineral Resources

/attachment

Appendix

CAPP/EPAC specific observations and comments regarding *The Environment Act* Consultation paper.

Observations and Comments

Introduction point 4. Public Engagement - reflection of public values in environmental decisions.

CAPP/EPAC comment: Broad public policy questions should not be revisited with each new project seeking licensing approval.

Exec Summary bullet 1: Enhance the generic set of Environmental Impact Statement (EIS) guidelines to reflect state of the art environmental assessment practices and consider cumulative effects, alternative assessment and/or climate change effects.

CAPP/EPAC comment: Cumulative effects and climate change cannot be addressed in a meaningful way through single project assessment. Other policy tools may be a more appropriate means to address them.

Exec Summary bullet 4: Create greater flexibility in the act as to when developments should be brought under the licensing regime.

CAPP/EPAC comment: The intention to enable greater flexibility to include development under an expanded licensing regime should be guided by the need for greater scrutiny on those projects that pose greater risks to the environment, and where there is not already an appropriate project licensing regime in place, not simply to capture more projects within an expanded project review regime.

Exec Summary bullet 5: Ensure that the act be capable of addressing emerging industries and activities.

CAPP/EPAC comment: The intention to ensure the Act can address emerging industries and activities should be based on a systematic approach to consider the certainty, risks, and significance of potential impacts.

Exec Summary bullet 6: Allow for periodic review of licences and licensing conditions to be added or removed.

CAPP/EPAC comment: While we agree with the premise that licensing conditions should reflect the best available knowledge; however, this needs to be carefully balanced with industry's needs for certainty to support investment commitments that may be measured in decades. The transitional mechanism should be clear. For example, new operating license provisions should permit existing projects to be grandfathered for a sufficient period to allow orderly and cost effective transition or be introduced only upon a material change in the scale of an existing project.

Exec Summary bullet 7: Continue to develop innovative compliance tools that will increase accountability of the polluter.

CAPP/EPAC comment: Development of innovative compliance tools appears positive, however, the tool needs to be commensurate with the risk and the consequences. Further understanding by industry of the intent of this point is required. Industry needs to understand who will pay for innovation.

Exec Summary bullet 8: Improve the public engagement process to reflect changes in information technology.

CAPP/EPAC comment: Improving public engagement to reflect technology is notionally positive if the intent is to improve transparency of the project review and approval process. However, careful rules need to be developed to define which segments of the public are legitimately and materially affected by a particular project and thus entitled to participate in the public engagement process.

Exec Summary bullet 9: Facilitate a positive contribution to sustainability.

CAPP/EPAC comment: Need to be able to deal with development in aggregate to ensure this. Does government have sufficiently integrated systems to make this determination? How is sustainability characterized?

Exec Summary bullet 10: Remove any duplication within environmental assessment and review process.

CAPP/EPAC comment: We support removing any duplication in the environmental assessment and review process.

Answers to Questions posed

1. How can the EIS guidelines be improved to facilitate thorough environmental assessment of proposed developments?

2. How should the content of the existing guidelines be enhanced in ways that provide a clear environmental protection benefit?

Industry's view is that current permitting, licensing and regulatory oversight should remain with the Petroleum Branch of the Mineral Resources department as per existing Acts and Regulations.

Figure 2A, Overview - very clear but need to be careful not to get caught in a 'do loop' on sufficiency of information. The contact should be prepared to manage the relevancy of information requests.

3. What should be included in the roles and responsibilities of the TAC?

We support the premise of having a range of appropriate technical specialists reviewing assessments. The TAC should help inform scoping of the Environmental Assessment, give input on the adequacy of information, and sufficiency of mitigation to manage effects (especially where there is uncertainty). The contact should manage scope so that concerns/comments/questions remain focused on matters pertaining to effective mitigation, not broad policy questions.

4. Are there any other agencies that should be included as representatives on the TAC?

It is critically important in having suitable petroleum industry expertise on TAC to ensure that expertise is available to properly evaluate each request.

5. Should we maintain the current Classes of Development?

6. Should there be flexibility as to how developments are categorized to allow for the inclusion of new developments that are the result of emerging technological advancements?

7. Which activities should be included in the licensing process?

Licensing Process, Current Licensing, Classes of Development - While leveling the playing field seems appropriate, oil and gas activity classes should be risk-ranked and well-understood activity should be treated as routine. Incidentally, it would be good to have a sense of what class of development oil and gas is considered to be. Based on examples of classes provided in the paper, industry would view typical oil and gas development as class 1 and include the following activities: seismic, well licensing, surface rights issues, and enhanced oil recovery projects. These projects should continue to be regulated under the existing Acts and Regulations with the Petroleum Branch

of Mineral Resources as the lead agency. A harmonization scan with other jurisdictions may be useful to consider.

Figure 2b Overview of Licensing - The circumstances/triggers for appeal need to be understood. Also, how will the EAB disincenit frivolous claims for appeal to avoid abuse of process?

Question 5 - Other provincial/federal regimes should be benchmarked to establish consistent classes of development.

Question 6 - Flexibility to accommodate new technology should be enabled but there needs to be consideration of transition to ensure predictability of regime.

Question 7 – New multi-well battery facilities should continue with existing regulatory oversight as provided by the Petroleum Branch, but also receive a class designation to fall within the licensing process of the Environment Act.

Process for Updating Terms and Conditions - Support the premise of enabling periodic review of terms and conditions based on new science. Key is transition to preserve predictability of regime.

8. Under which circumstances should a licence be reviewed, renewed or altered? Should the circumstances be related to time, changing conditions or other factors?

Question 8 - Project proponents should have the ability to request updates based on science regarding the efficacy of new technologies/mitigation to reduce impacts. However, in terms of certainty, reviewing project licensing conditions should be done in close consultation with the project operator or investor.

9. How do we ensure that the appeals process remains effective for the greater benefit of society?

Question 9 - Frivolous appeals merely to delay projects should be discouraged. Project proponents should be able to appeal license refusal to the Minister/Review Panel.

10. How can Manitoba more effectively enforce the provisions of *The Environment Act*?

11. What do you think about the expansion of penalty provisions in the act? Please explain.

Enforcement, Compliance tools - Compliance tools are critical to ensuring public confidence that development is responsible. The spectrum of enforcement tools in Figure 3 is appropriate. Progressive enforcement in the case of repeat offenders or a pattern of disregard for obligations is appropriate. A scan to harmonize with other jurisdictions may be useful. The Alberta Energy

Regulator's model may be relevant. It is unclear what degree of transparency is expected given comments about wanting to modernize in part due to technology/Internet. Innovative compliance tools exist in other regimes so this approach would achieve consistency across provinces. Phased implementation should be considered.

12. Are current forms of communication (e.g. local newspaper advertisements and public registry) effective at conveying information to the majority of Manitobans? Are there any other effective forms of communication?

13. Are there any other ways to enhance public engagement? Please explain.

Public Engagement - Seems comparable with other jurisdictions. The model looks reasonable, however, Manitoba should ensure that public engagement parameters prevent manipulation by those who are not directly and adversely affected. Individual project review/approval process is also not the appropriate venue to address high level provincial policy goals around climate change mitigation, cumulative effects.

Question 12 - Current forms should be effective, but ability to subscribe to get updates seems useful.

Question 13 - There may be circumstances where enhanced public engagement is appropriate but are more likely related to important places where clearer land use policy is needed. In those instances policy discussions should be led by government. Some companies may appreciate this option if there is value in discussing a new technology used for their development.