

SUMMARY OF INPUT FROM ENVIRONMENT ACT STAKEHOLDER INPUT SESSION

SEPTEMBER 27, 2014

NORWOOD HOTEL, WINNIPEG, MB

**FACILITATED AND COMPILED BY THE MANITOBA ENVIRONMENTAL INDUSTRY
ASSOCIATION (MEIA)**

FOR

**ENVIRONMENTAL APPROVALS BRANCH
MANITOBA CONSERVATION AND WATER STEWARDSHIP**



On Wednesday, September 27, 2014 the Manitoba Environmental Industry Association (MEIA) hosted a stakeholder input session on proposed changes to the *Environment Act*. The session was attended by 48 people, including three MEIA staff, four staff of the Environmental Approvals Branch of Manitoba Conservation, 32 representatives from MEIA members, and 13 non-members. A list of attendees and their affiliation is provided in Appendix I.

The session began with a presentation by Tracey Braun which summarized the proposed review process for the *Act*, and put forth a series of questions regarding on the *Act*, and related topics.

The attendees worked in groups to provide input on the series of questions under the following topics: environmental assessment guidelines, the Technical Advisory Committee (TAC), the licensing process, enforcement, and the public engagement process. Groups recorded their thoughts in written form, and then were asked to share the most important feedback for each of the question areas with all attendees.

The responses discussed at each table, and as a broader group (captured on the flipchart) are summarized below. Responses from the table discussions are summarized first. In some cases, the flip chart responses were considered for a series of related questions, and follow the specific notes from table discussions at the end of the question series.

ENVIRONMENTAL ASSESSMENT GUIDELINES

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

Table Responses:

- More prescriptive; current are too generic;
- “Significance” should be defined; make MCWS expectations on significance clear;
- Allow flexibility and terms/statements which guide proponent to do more;
- No guidance for public consultation in current info bulletin;
- Improved definition/guidelines for human health risks;
- Need to look at climate change effects, cumulative effects and socio-economic effects;
- Guidelines need scalability factor based on project size:
 - Larger class – bigger picture effects of each project;
 - Smaller class – cumulative effects of many projects;
- Need to have risk screening process;
- More certainty in the process for proponents;
- Content needs to be more specific – information required in the proposal;
- Provide more guidance for public engagement;
- Consider class assessments (like in Ontario, U.S. permit by rule)
 - Could streamline process;
 - Need to undertake significant consultation with industry and public when developing this type of assessment criteria;
- Negatives of a flexible process? Speed? Need for dynamic process driven by speed of development/changing industry?
- Match CEAA 2012 – harmonize with federal guidelines;
- Stand as one guidance document – e.g. climate change, cumulative effects;
- Flexible approach where complexity of guidelines suit complexity of proposed development.

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

Table Responses:

- Make it clearer what information/effects should be discussed;
- Address the differences between different types of projects, e.g. economic restraints of smaller proponents or projects;
- Including points of reference for what needs to be included in an environmental assessment.

Flip Chart Summary:

- Harmonize the provincial guidelines with *CEAA 2012*;
- More permitting by rule = class EAs;
- Use a more risk-based approach; for small scale developments (e.g. concrete plants, grain elevators, use a class EA approach, but if deviations occur, with the development, or the site, require additional effort;
- Use a pragmatic risk-based approach;
- Class EAs would help proponents avoid undue legal costs for “run-of-the-mill projects (i.e. most Class I projects);
- Public input during the terms of reference stage for larger, more complex projects is recommended;
- There are challenges with current guidelines; no how-to on consultation is provided.

THE TECHNICAL ADVISORY COMMITTEE

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

Table Responses:

- Specific criteria that they are considering – help with transparency;
- Timelines for comments:
 - Could vary for different projects;
 - Could include mechanism to extend time if needed, example – FIPPA process;
 - Standard format for TAC comments – consistency in comment in registry summary;
- Is the TAC fixed? I.e. who is involved and where in the TAC process?
- Does TAC have standard list of criteria?
- Comments should be limited to specific areas of expertise/responsibilities in timely manner;
- Define roles and responsibilities in the Act;
- Advising proponent in early stages of project – could be TAC resource issues
- Standardize formal TAC responses;
- Involvement of hands-on practical experience (project-level expertise);
- Timelines governing provision of responses;
- Include a metric for TAC to provide a response appropriate to the level of complexity of the project.

Flip Chart Summary:

- The roles and responsibilities should be included in the Act;
- Comments should be limited to the areas of expertise;
- Review should be conducted in a timely manner (2 comments);
- The level of detail of comments should be in sync with the complexity of the project.

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

Table Responses:

- More people who actually work in in the field;
- Possibly a proponent designated engineer, etc.;
- First Nation representation;
- Also comment the the government should be able to designate who is on the TAC;
- Department of Healthy Living input should be on TAC to take a broad look at health and well-being;
- Retain ability to bring in external expertise in ad hoc process;
- Public involvement at TAC (e.g. public safety group).

Flip Chart Summary:

- Important to retain ability to bring in external expertise as needed for a project;
- Involve the public through a safety group (i.e. bring expertise);
- Don't underestimate the intelligence of the public.

LICENSING PROCESS: CLASSES OF DEVELOPMENT

**5) Should we maintain the current Classes of Development?
If not, what other system should be considered?**

Table Responses:

- Maintain current Classes of Development;
- Classes of Development regulation is very rigid in some cases, e.g. court found project not part of Class (Campbell Soup Co.);
- Residential developments/cottages should be included;
- Review of license every 5-years consistent with Planning Act;
- Link Environment Act with Planning Act;
- Yes, but use a risk-based permitting system for routine developments/projects; i.e. biosolids land applications similar to manure management plans.

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? If yes, how can this be accomplished?

Table Responses:

- Yes, keep the categorization of development flexible and determined based on how complex the project is;
- Ontario – comprehensive approvals;
- Add mechanism for decision-maker to add project to Classes of Development, or require assessment based on potential impacts of project;
- “Spectrum” of classification for certain groups of developments;
- Class screening system in place;
- Greater transparency with how new developments are categorized;
- Yes, descriptive terminology around the Class description thus allowing for inclusion of new economic/industrial technological advancements.

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

Table Responses:

- Residential/cottage
- Snow dumps;
- More clarity in urban vs. rural road and bridge projects;
- Greenfield housing developments, hundreds of acres of prime agricultural land is being consumed with no regard for sensitive lands, water, species at risk; only municipal plans and Development Act and municipal by-laws oversee these and don’t account for the environment.

Flip Chart Summary:

- Should consider streamlined Class EA process for standard, low risk projects;
- Mega projects should be subject to early public input at the terms of references (TOR) stage to avoid surprises;
- It doesn't matter how you classify simpler projects, but it is important when considering Class III projects;
- Focus on the nature of project impacts rather than the type of activity.

LICENSING PROCESS: UPDATING TERMS & CONDITIONS OF EXISTING LICENSES

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

Table Responses:

- No more changes required: existing flexibility within the Act;
- Existing flexibility is critical and must be retained;
- Time (10 years) so some predictability unless proponent is making significant alterations;
- If no significant changes, should be able to be free to make changes as wanted;
- Disagreement on alterations: difficult to determine impact unless assessed;
- Review of alterations are being made;
- Review is consistent complaints being made;
- If our understanding of an issue changes, and a license is affected by this or new regs, there may be a need to review an existing license;
- Triggers must be clear whatever they are:
 - Increase in production (% clearly indicated);
 - Change in technology (clearly defined);
 - Age of license (reviewing state licenses are fold license applicable? Review licenses, not open them;
 - Timeframe determined by Class of Development?
- Changes input/outputs within a given threshold.

Flip Chart Summary:

- Current approach dealing with amendments is a good approach;

- Q. If our understanding of impacts/changes to other laws/regs occurs how this is taken into account? E.g. species of concern becomes endangered or threatened. The Environment Licence can't over rule other laws/regs;);
- Consider a fixed renewal process, e.g. 10 yrs. Which allows proponents to plan;
- Merit to fixed renewal process, but this should be aligned with the class of activity;
- Need clarity around what requires an notice of alteration;
- The nature of a review can be tied into monitoring requirements;
- Renewals should consider CEC orders issued in the interim.

LICENSING PROCESS: APPEAL PROCESS

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

Table Responses:

- Why does Manitoba have an appeals process and other provinces don't? A jurisdictional comparison would be helpful;
- Include timelines for responses: right now there is no consistency in when responses are provided to proponents and public;
- Provide reasons for appeal decision (transparency);
- Make appeal documents publicly available;
- Should consider independent reviewing body: CEC if no public hearing, separate panel if CEC has been involved;
- Transparency which projects have been appealed (internal appeals);
- Look at Environmental Review Tribunal (Ontario);
- Clarity and timeliness;
- Based on certainty of regulatory process;
- Adhere to timelines or the process may not be trusted.

Flip Chart Summary:

- Appeal timelines need to be adhered to as this contributes to a loss of trust in the process;
- There is a 30 day period for appeals, but no timeline for decisions.

ENFORCEMENT

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

Table Responses:

- Need more certainty;
- Consider CEPA alternative measures;
- Consider adopting Ontario compliance guidelines – helps prosecute and defend, also helps proponents understand risks ahead of time;
- Hire more officers who operate within a framework which is clear to both parties (proponent and crown);
- There is variability in interpretation by enforcement officers which can cause problems;
- More resources in department (more staff);
- Is there a need?
- DGH & T;
- Consistency across industry and types of projects/developments.

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

- Administrative monetary penalties.
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Flip Chart Summary:

- Hire more officers!
- Provide a clear framework for what occurs when they go onsite;
- Variability exists with responses to the provisions in the license and what constitutes compliance;
- Would hate for Manitoba to become an Ontario or Alberta regarding enforcement;
- Better to spend money on solutions;
- Enforcement guideline needed to walk clients through the process to provide greater certainty;
- Mandatory minimum fines tie prosecutors hands with small spills, etc.;
- Consider an option to take out of the legal/prosecution process if a client admits to the facts, and agrees to pay compensation to offended parties;
- Automatic fine bumps with 2nd and 3rd offences are not necessarily the right way to go; need an element of proportionality.

PUBLIC ENGAGEMENT

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?

Table Responses:

- Yes, effective;
- Having the public registry setup/expansion beneficial, helpful in preparation of future submissions; Can look at pressure previous projects for what to include;
- Use of social media;
- Involvement at early stages (i.e. alternative site selection stage);
- Act must state “Aboriginal Engagement” within the Act;
- Act should be clear on how/where public comments have implications for a project;
- Act should be clear on Aboriginal Engagement.

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

Table Responses:

- Create licence documents that are easily understood by the public (use of headlines, definitions, guidelines explaining what should be included);
- Provide guidelines to proponents;
- Create mechanism for early public consultation;
- Providing funding for education initiatives (First Nations, etc.);
- Use social media;
- Provide breakdown of what should be in public registry files (index); some online files only contain correspondence, unable to know what is missing.

Flip Chart Summary:

- Consider webinars;
- Educate the public on the process of engagement;
- Need better link between aboriginal engagement in the EA process and crown engagement process;
- Need attention paid to engaging the public earlier in the process;

- For example, with a mining project, the public should be engaged at the exploration stage.

OTHER COMMENTS

Table Responses:

- Registry should have a web map format which allows people to see the locations and key features of the project. This will facilitate cumulative effects assessment as well;
 - Is a jurisdictional review being conducted to look at other provinces and what they are doing?
 - Clear timeframes for government “touch time” in the receipt, processing and review timelines should be published – similar to federal government;
 - Requirements are clearer in other provinces; We need a clearer process i.e. checklist, clarity in rules, and flexibility for those who “fall within the cracks”;
 - Activities in the Oil and Gas sector should be considered under the *Environment Act*.
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Flip Chart Summary:

- Timelines for the process are too long; consider using LEAN to shorten the process;
- More staff resources would shorten the process;
- Could engage a qualified reviewer (contract) to shorten the process;
- EA needs to apply to Oil and Gas activities.

APPENDIX I: LIST OF PARTICIPANTS AND ORGANIZATIONS

	MEIA Member	Non Member	Name	Organization
1	x		Anseeuw, Carmen	Stantec Consulting
2	x		Barnes, Nick	Manitoba Hydro
3		x	Blatz, Jennifer	R.M. of Ste. Anne
4	x		Braun, Tracey	Conservation & Water Stewardship
5	x		Burland-Ross, Siobhan	Conservation & Water Stewardship
6	x		Campbell, Patrick	AMEC
7		x	Canart, Ryan	Prairie Improvement Network
8	x		Carlson, Joel	Miller Environmental Corporation
9	x		Chapman, Scott	Stantec Consulting
10	x		Coughlin, Sarah	Manitoba Hydro
11	x		Duddridge, Terry	Stantec Consulting
12		x	Fast, Heather	Manitoba Law Reform Commission
13	x		Heinrichs, Dennis	Dillon Consulting Ltd.
14	x		Hombach, Sven	Fillmore Riley LLP
15		x	Howatt, Stephen	Student
16	x		Howes, Dave	Miller Environmental Corporation
17	x		Hunt, Joel	Manitoba Hydro
18	x		Hunter, Kristina	University of Manitoba
19	x		Johnson, Shannon	Manitoba Hydro
20	x		Jonasson, Jon	MMM Group
21	x		Keam, Darren	MMM Group
22	x		Kozak, Chris	City of Winnipeg
23	x		Labossiere, Don	Conservation & Water Stewardship
24		x	Lechow, Cliff	BFI Canada
25		x	Louis, Sherif	Genome Prairie
26		x	Menzies, Meghan	Public Interest Law Centre of Legal Aid
27	x		Moffatt, Shaun	KGS Group
28	x		Morin, Linda	Manitoba Hydro
29	x		Offman, Steve	KGS Group
30		x	Paterson, Alexander	Student
31	x		Raddatz, Becky	City of Winnipeg
32		x	Sadiq, Somia	Student
33	x		Seewald, Brad	SLR Consulting (Canada) Ltd.
34		x	Sheppard, Jayne	Tolko Industries Ltd.
35		x	Smee, Frances	RM of Rosser
36	x		Stefaniuk, John	Thompson Dorfman Sweatman, LLP
37		x	Stott, Sheldon	HyLife Ltd
38	x		Swanson, Gary	Manitoba Hydro
39		x	Trudel, Michel	PC Caucas
40	x		Tyson, Dave	TetraTech
41	x		Webb, Bruce	Conservation & Water Stewardship
42	x		Webber, Randy	Golder
43	x		Wheatley, Nancy	Red River College
44	x		Wizbicki, Ryan	TetraTech
45	x		Blue, Barry	BFI Canada (walk-in)
46			Tardiff, Deb	MEIA Staff
47			Deans, Rosemary	MEIA Staff
48			Shaw, Margo	MEIA Staff

