

October 9, 2014

Minister Mackintosh  
Minister Responsible for the Environment Act  
Room 330  
Manitoba Legislative Building  
Winnipeg, Manitoba.

Dear Minister:

**Re: Manitoba Conservation Review of the Environment Act Public Registry File #5711**

Given the nature of this regulatory review it is relevant to identify my activity with relation to the Manitoba Environment Act, starting in 1985. At the time I was the staff liaison for new public policy for the Manitoba New Democratic Party. I attended committee meetings regarding policy in support of a new Environment Act in Manitoba, and managed the resolutions debated at annual conventions supporting the move to the current Environment Act. I also was a member of the Ministerial Advisory Committee for the cabinet portfolio that included Environment. Discussions about proclaiming the 1987 Act and the steps required were part of the committee deliberations. When that government fell early in 1988 many were advising proclaiming the Act despite the situation. That was done. The subsequent provincial government continued steps to make the Act operational, established the Clean Environment Commission, the new job categories, the public registry, and the licensing process. The approach to grandfathering pre-existing licenses took place then also.

More recently I have worked in relation to the Act during the past 20 years. In roles with World Wildlife Fund Canada, and Nature Canada, then through Manitoba Wildlands, I have participated in several sets of Clean Environment Commission hearings, and many more reviews of proposals under the Act. These sets of review comments are on the public record (though this has been significantly limited with the advent of the on line registry and closure of the complete public registry at 123 Main Street.) The Manitoba Wildlands website also holds many of these work products, including from CEC hearings.

It should be stated that I have assisted environmental and legal colleagues across Canada with respect to Manitoba's regulatory system, and the Act, during this same 20 year period.

In short my occupational activity has been clearly connected to this Manitoba law since before it was law. As director of Manitoba Wildlands it may be that I have had the most to do with this Act outside the ranks of government or those consulting firms who work for proponents.

We are providing here some explanation in a covering letter, with a set of **Recommendations** for improvements in the Act. These are based on experience with the Act, and from watching changes in the administration of the law, changes in the types of proposals filed under the law, and continuing knowledge about environmental effects, assessments, and impacts. The Act is based on 1970s and early 1980s knowledge and concerns. Today 30 years later our knowledge

and concerns have increased, changed, and accumulated. The risks to our environment and sustainability have increased exponentially also.

The greatest weakness of the Act and the two discussion papers is the lack of clear language about the natural world and natural environmental elements. Language about environmental protection that lacks a clear cohesive understanding that our entire economy is based on the environment leaves us all at risk from decision making. Watershed, ecosystem, natural region and habitat bases for assessments are urgently needed in our environmental regulatory system in Manitoba.

**Climate change is now potentially part of the standards and effects for most proposals under the Act.** It is clear that we are doing a poor job of placing requirements in place regarding climate change for proponents to obtain an environment licence. This means we have already a working example of why the Act needs to be changed to be able to open licences so we deal with new impacts and environmental effects from existing licensed projects. Two sets of recent CEC hearings demonstrated the weak approach we are taking to requirements for climate change mitigation, emissions reduction, and a clear information basis regarding climate change effects in Manitoba. Nothing was done to hold the proponent to the public policy, regulatory requirements and environmental effects of climate change in either case. Today we still do not have a carbon inventory or emissions budget for the province, with clear goals. This impacts our ability to make decisions under the Act.

**Manitoba is overdue to adjust to current standards, best practices, and knowledge for environmental effects assessment and cumulative effects assessment** – as demonstrated in recent Class 2 & 3 decision making and licences issued. A main observation would be that Manitoba has simply not kept up to date with respect to the science, technical knowledge, conservation biology or standards being applied to decision making in other jurisdictions. On that basis we consider it relevant to provide our comments. See our Recommendations.

We would note though that the lack of face to face discussion and exploration of steps to improve the Act is a real weakness of the Manitoba Conservation process. The first round, or first steps which have often been effectively used in Manitoba, with Manitobans, were omitted in the ‘consultation’ about updating our Environment Act. A social democrat or humanist standard would assume that listening and learning are part of everyone’s responsibility. This includes listening and learning from Manitobans in person about the reality of our Environment Act, and the potential for improvements. This has simply not been done by our government.

#### **Discussion Papers/ Two Reviews.**

**The Manitoba Law Reform Commission has been conducting a review** of the Environment Act since late 2013. Their initial discussion paper ignored the step that was needed: to talk with Manitobans about the Act. They have since conducted extensive in person interviews with Manitobans who have worked with the Act, with licensing, and in hearings. They are mandated to report by the end of 2014. Their discussion paper was based on a set of assumptions that skip over the reality of the Act, the operation of the law, and what is needed to review and improve the Act. In short, it had an agenda. We note that the notes taken during our in person interview with the Law Reform Commission vary widely from the content of the audio file of that same

interview. The audio file has been used in arriving at the content of this cover letter and our set of Recommendations.

**More recently Manitoba Conservation was mandated**, through the office of the Director under the Act, to conduct a 'consultation' regarding changes to the Act. They too issued a discussion paper. They too missed the first step, to talk with those of us who are most experienced with the citizen role in the Intent of the Act. The difficulty with the numerous discussion papers including this one, issued by the Department in recent years, is they each dictate a response to what the government has put on the page. By definition a number of elements are likely to be left out as a result. This discussion paper is based on assumptions that are not accurate, which essentially means the exercise and discussion paper are weak and they have an agenda.

**Both discussion papers give little attention to the importance of citizen actions, citizen participation, independent, external audits and analysis.** The knowledge of Manitobans about making best decisions about our lands, water, and air, in practice, is only given lip service in the discussion papers. See Intent of the Act below. This is unfortunate. A public consultation that is a blind web page with no record of what was filed, and no ability to share what was filed is an exercise in hubris, potentially designed by staff who are sure that they know what needs to be done. (We note that the discussion paper is on the public registry and hope that means comments will be posted.) It is certainly not a good faith exercise with citizens. Nor does it bear any resemblance to the steps which brought Manitoba to its current Environment Act. It remains a mystery what is intended as next steps regarding the Environment Act review.

There is a question here. Should a lawyer for a major proponent in Manitoba, holder of numerous licences under the Act, serve as an advisor to the Law Reform Commission regarding their review, and be privy to all documents etc ? Also should the Director responsible for all licences under the Act be the senior civil servant handling the government and public review of the Act ?

**We are providing recommendations**, rather than detailed response to the two discussion papers contents. Where relevant we have agreed with the identification of action needed. It would be better form to acknowledge sources for these actions identified in the two discussion papers. Certain of these are from repeated reports from our Clean Environment Commission. (We are not including recommendations specific to the Clean Environment Commission, as it would require resources not available at this time.)

**The comments and recommendations provided here by Manitoba Wildlands are not complete.** Rather they are based on our experience, knowledge and capacity to respond at this time. It is clear to us that the Intent of this Act has not been fulfilled in recent years. There is a great deal of work to do.

Basis to reject a proposal or EIS or EAP under the Act is weak. Regulatory steps to seek a licence after an emergency are lacking in our Act, and a major instance of this will begin soon. Talk of sustainability is just one example of definitions missing in this Act.

We provide below significant clauses in the Act, relevant to our comments.



**Intent and purposes Section 1(1\_)**

1(1) The intent of this Act is to develop and maintain an environmental protection and management system in Manitoba which will ensure that the environment is protected and maintained in such a manner as to sustain a high quality of life, including social and economic development, recreation and leisure for this and future generations, and in this regard, this Act

- (a) is complementary to, and support for, existing and future provincial planning and policy mechanisms;
- (b) provides for the environmental assessment of projects which are likely to have significant effects on the environment;
- (c) provides for the recognition and utilization of existing effective review processes that adequately address environmental issues;
- (d) provides for public consultation in environmental decision making while recognizing the responsibility of elected government including municipal governments as decision makers; and
- (e) prohibits the unauthorized release of pollutants having a significant adverse effect on the environment.

**Public registry Section 17**

17 Subject to section 47, the director shall maintain or cause to be maintained a public registry, containing for each proposal received

- (a) a summary, prepared by the proponent in form and detail approved by the department;
- (b) the disposition and status of each proposal;
- (c) a copy of the environmental licence, where applicable;
- (d) a copy of the assessment report;
- (e) justification for not accepting the advice and recommendations of the commission, where applicable; and
- (f) justification for refusing to issue an environmental licence, where applicable; and
- (g) such other information as the minister or director may from time to time direct.

**Regulation development Section 41(**

41(2) Except in circumstances considered by the minister to be of an emergency nature, in the formulation or substantive review of regulations incorporating environmental standards, limits, terms or conditions on developments under this Act, the minister shall provide opportunity for public consultation and seek advice and recommendations regarding the proposed regulations or amendments.

Yours truly,

Gaile Whelan Enns, Director, Manitoba Wildlands

Copy to:

Ms T Braun, Mr. R Labossiere

Law Reform Commission of Manitoba