

## Environment Act

Consultation:

August 12, 2014

Questions:

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

The following approach should be done for projects currently not covered by the Environment Act including: **mining developments** (gravel extraction, minerals, potash, coal, peat) **oil well sites** and **pipelines within the province (less than 10 km long)**.

I know these above developments are supposedly regulated by the Mining Act and the Oil & Gas Act but it is misleading to infer that the Mining Act or Oil & Gas Act address cumulative environmental effects, alternative assessments or climate change effects in conjunction with other developments regulated by the Environment Act. Environmental assessment in the Mining Act or Oil & Gas Act has generally not been done in the past but it should be regulated by the Environment Act in the future.

If the MB government truly wants to protect the environment then it must take the 'big picture approach' and review ALL developments, not just the ones currently listed in the regulations. Only then will it be able to say that it is assessing cumulative effects, alternative assessments and climate change impacts on a provincial basis.

The EIS guidelines should be improved by requiring proponents of all developments to conduct effects assessment using a standard format such as the following:

Effects Assessment

Criteria used in assessing the relative significance of environmental effects from the project:

- Nature/Direction of Effect - Positive or negative impact or direct or indirect effect.
- Magnitude - The typical effects of the impact (low, medium or high impact) on the environment/community.
- Spatial Extent - Area or volume covered (immediate, local or regional area).
- Timing - Construction, operation, decommissioning.
- Duration of Impacts – Short term, long term, intermittent, continuous.
- Reversibility / Irreversibility – An estimate of whether or not an impact, once it has been stopped, can return to its pre-existing situation.
- Likelihood of Occurrence Without Mitigation – An estimate of whether the effect is likely to occur if mitigation options are not implemented (likely, not likely).

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

To have a clear environmental benefit you must have clear guidelines. You don't have to re-invent the wheel. The MB government should conduct a review of other western Canadian provincial jurisdictions and apply some of their methodologies which would apply in Manitoba.

For example:

Mitigation measures should be proposed to eliminate, prevent or reduce the potential environmental effects. This is not always submitted by proponents. There should be follow up actions if mitigation cannot adequately address a certain issue.

The level of residual effect predicted after application of mitigation measures should be ranked as follows: (Residual effect is rarely discussed in provincial documents)

- High - Potential effect could threaten sustainability of the resource and should be considered a management concern. Research, monitoring, and recovery initiatives should be considered.
- Medium - Potential effect could result in a decline in the resource to lower than baseline levels. The resource may be stable in the study area after project closure and into the foreseeable future. Regional management actions such as research, monitoring, and recovery initiatives may be required.
- Low - Potential effect may result in a slight decline in resource in the study area during the life of the project. Research, monitoring, and recovery initiatives would not normally be required.
- Minimal - Potential effect may result in a slight decline in resource in study area during construction phase, but the resource should return to baseline levels in the long term.

### **Questions:**

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

TAC membership should include practitioners trained in environmental impact assessment. TAC members should have this role as their primary responsibility. They should not be expected to do their main job and then do the TAC role as an additional responsibility.

TAC members should be responsible for the 'big picture' assessment. In order to assess the big picture, TAC members should be developing 'indicators' of environmental stress and 'threshold levels' for specific ecoregions and specific sensitive species and sites where data exists. If no information exists, then TAC should mandate studies to gain baseline information for future adaptive management. They should let the consultants do the EIS and assess if the EIS is complete and comprehensive. TAC members should regularly submit supplementary information requests to get clarification from consultant reports.

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

The TAC should have access to expert consultants (e.g. species at risk specialists, soil scientists, social impact practitioners, First Nation elders) that can provide feedback on specific issues without compromising confidentiality. Experts paid by a standing offer contract could facilitate quicker reviews when TAC members may lack specific expertise.

Other agencies such as the Aboriginal groups, Manitoba Habitat Heritage Corporation, Keystone Agricultural Producers, MB Beef Producers, the Heavy Construction Association of Manitoba and Manitoba's largest oil producer, Tundra Oil & Gas should be brought together on an advisory council to see & hear the views from the "other side" and provide feedback to the TAC.

#### **Questions**

#### **5. Should we maintain the current Classes of Development?**

Yes but increase the classes to cover more developments

#### **If not, what other system should be considered?**

By expanding the classes you can address new developments or those which have developed since the classes were made in 1988.

#### **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?**

Yes. Absolutely.

#### **If yes, how can this be accomplished?**

You don't have to look too far. The current Environment Act allows the Minister to designate an activity as a "deemed development". All you have to do is start applying that part of the Act by developing a list of deemed developments.

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

I would suggest that oil well sites and within-province pipeline (less than 10 km long) developments be included in the Environment Act licencing process. As it pertains to petroleum development activity, fracking technology and any off shore drilling in Hudson's Bay should have to undergo an environmental licencing process. In addition, mining activities such as new quarry pits and expansion of existing gravel leases should be designated as developments under the Environment Act. You could also include wind farms, solar farms and geothermal developments.

As it pertains to oil well sites and within-province pipelines, it seems odd that Manitoba does not mandate the submission of a written assessment of an oil well site or a within-province pipeline (less than 10 km long) prior to it being licenced. By mandating pre-assessment, it would demonstrate environmental due diligence on the part of oil companies. It would assess what conditions exist prior to

development and allow for proactive mitigation prior to drilling the well site. It would document that oil companies are in compliance with species at risk, migratory bird, water rights and historic resources legislation. Right now there is nothing documented that show oil company compliance with other Acts. It may be a condition of their Oil & Gas Act licence but the current government legislation does not require a demonstration of compliance. Companies could be displacing species at risk or impacting wetlands but nobody knows for sure. Pre-site development assessments could be used to demonstrate environmental compliance.

Oil well and within-province pipeline pre-development site assessments are required to be conducted by oil companies in Alberta and Saskatchewan. These are some of the same companies that operate in Manitoba. The assessment does not have to be onerous. In fact, Saskatchewan has developed a standard assessment protocol that all companies use to assess species at risk potential, wetland impacts, existing soil conditions and historic resources potential. This assessment can be completed in an hour with many sites done in a day. Most oil companies have incorporated this activity into their operational delivery in other provinces but do not in Manitoba because it is not required by the Oil & Gas Act or the Environment Act. Pre-development oil well site assessment can be simple, straightforward and cost effective. It demonstrates active environmental due diligence and helps companies with long term planning.

I am not suggesting this pre-development assessment will put a halt to oil & pipeline development. On the contrary, it may validate the current well site & pipeline selection process (whatever that is) and demonstrate to the greater public that oil well development can be done sustainably with due regard to environmental protection. Right now though, it is a guessing game.

There is no point in dredging up the past but in moving forward, pre-development oil well & pipeline assessment makes sense. Manitoba species at risk, oil well development, wetlands and historic resources all overlap significantly in SW Manitoba. Pre-development assessment will help address cumulative assessment, alternatives assessment (i.e. using horizontal directional drilling vs. vertical drilling) and climate change impact assessment.

Oil well pre-development assessment was exempted from the Environment Act in 1988. In this day and age, it is ridiculous to suggest that petroleum activity is not a 'development'. It needs some environmental oversight.

## **Question**

### **8. Under which circumstances should a licence be reviewed, renewed or altered?**

Any licence 5 years and older. So many things can change in 5 years and this provides for the application of adaptive management. Maybe some licences could be eliminated after a review (i.e. crop protection warehouses)

**Should the circumstances be related to time, changing conditions or other factors?**

I've suggested a 5 year window as it would be a big initiative and government needs time to address properly. I think a time frame is a reasonable approach and is predictable so that government can prepare for the initiative every 5 years. Some adjacent jurisdictions (i.e. Minnesota) may have done a similar review from which Manitoba could learn.

**Questions**

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

I can understand that government would not want to get 'bogged down' with endless appeals. Presumably, if the proper initial EIS process is conducted, then appeals will be kept to a minimum. Based on the class of development, TAC members could develop a suggested set of guidelines that would delineate the scope and conditions to which an appeal could be submitted.

**Questions**

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

There needs to be a 'carrot and a stick'. Right now government only enforces by way of penalty provisions. Government has not provided enough incentives for industry to develop "best management practices (BMP)" for their industries. You should mandate industries to submit BMP's and then reward industry with more streamlined licencing procedures, once BMP are implemented.

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

I think the administrative penalty approach will be great. It will create a revenue stream and allow enforcement personnel to focus on bigger picture issues instead of wasting time on court proceedings. Judicial orders, injunctions and "stop work" orders raise the profile of government by showing 'active' enforcement. These are good initiatives and it's about time.

**Questions**

**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?**

Yes. The current forms are effective. MB government could also produce a 'notifications newsletter' online through 'Facebook' or an 'Environment blog' that allows people to go directly to the site without having to navigate to the public registry.

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

Yes. Local advisory committees are excellent ways to get general feedback on environmental issues and allow government to engage the public, while gaining a 'pulse' on current public views. Some governments are very concerned about getting public feedback as some groups tend to dominate the feedback. However, employing independent facilitators at advisory group meetings, who are skilled in getting feedback from everyone, ensures all people get a chance to have a say.

#### **FINAL COMMENTS:**

The Manitoba government should be commended for conducting this long overdue Environment Act review.

If the MB gov't wants to address cumulative impacts, alternatives assessment and climate change impacts then it must include more developments under the regulations of the Environment Act. This particularly pertains to those developments with land & water based impacts such as mining developments, oil wells and pipelines.

People can sense deception when a government tells them that overall environmental protection is important but then government exempts major developments (which have cumulative or climate change impacts) from overall environmental regulation under the Environment Act.

Stop talking out of both sides of your mouth and show some environmental leadership. I am not anti-development. I think we can develop a sustainable society over the long term. Change for the better takes time but government must lead. Environment sustains industry, however. Not the other way around. That is a principle that must be understood.

Thank you for the opportunity to provide input. We have a great province. Let's keep it that way!