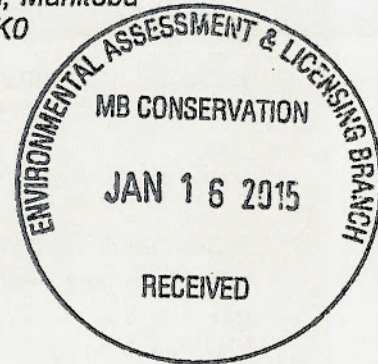


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January 12, 2015

Tracey Braun
Director
Environmental Approvals Branch
2nd Floor 123 Main Street
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Winnipeg, Manitoba
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Dear Ms. Braun:

Re: Environment Act Consultation

Thank you for accepting this submission on the Environmental Act Consultation, even though it is over 3 months late. Although I spotted the request for input sought by the Manitoba Law Reform Commission on The Environment Act, I missed the call for a similar study from the province. You have a copy of my response to the Law Commission dated April 14, 2014, as does the Minister of Conservation and the Conservation Critic. Many of the issues discussed in my response to the Law Commission provide answers to the points raised in the provincial consultation. Nevertheless, and at the risk of repetition, I am offering the following comments. They are provided in chronological order, based on the page numbers in the Environment Act Consultation (EAC).

Page 2 INTRODUCTION

The Introduction contains a number of platitudes that really do not manifest themselves in the real world of Manitoba Conservation. Environment Assessment (EA) in Manitoba has historically been largely window dressing. Furthermore, I have long since given up the belief that "Environmental protection is a key priority for Manitobans". They might subscribe to such a motherhood notion, but they do not engage in its delivery. That is why public response to Environment Act Proposals (EAP) is dismal. That is why you got 24 (now 25) responses to the EAC.

By the way, citing TomorrowNow to support public consultation is ironic. That document was published and invoked before the time for public consultation had expired.

Page 3

The chart on page 3 offers to "Enhance opportunities for public involvement" as a goal. I would like to believe that this means better access by the public to politicians, civil servants and

proponents via more public hearings. I also hope that it means continuing engagement rather than receiving letters like this and never talking to the author. Perhaps encouraging such interaction will improve the crappy public response to EAPs. I am weary of submitting labour intensive comments and never hearing how they were received.

Page 4 ENVIRONMENTAL ASSESSMENT

When seeking public opinions it is wise not to prejudice your case with statements like: "Manitoba has been a leader in environmental protection for many decades". This may or may not be true depending on the context. Perhaps other jurisdictions have utterly horrid environmental protection which makes us look good. Perhaps the blind are leading the blind. Maybe our standards are so low that codification is moot. If, indeed, we are a leader it has not made a difference on the ground. In any case, the above quote is inappropriate in this document whether it is factually true or not. You are seeking, not leading, public opinion.

"Environmental assessment guidelines are provided to all proponents." We would learn a lot about the relative competence of proponents if they were required to submit their own guidelines before relying on the prompts of government. In my experience most proponents don't have a clue, and simply rely on hired guns to respond in a manner akin to preaching to the choir. The songsheet is the pre-printed guidelines document.

I was unaware that "project specific guidelines....may be developed by the government or by the proponent". I don't know why this needs to differ from the "Environment assessment guidelines....provided to all proponents" as referred to above. I also did not know that "a draft guidelines document is prepared and is screened by both the public and TAC". I cannot remember ever having the opportunity to participate at this stage of an EAP. I also wonder why the TAC is even allowed to participate since, at the end of the process, it is invited to comment on the proponent's final submission. This is a conflict of interest, and is akin to a teacher hinting at what is on the final exam. The EIS becomes a self-fulfilling prophecy.

Questions

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

Your colleague, Bill Watkins, teaches a fourth year, full credit course on Environmental Assessment at the University of Winnipeg. It is an outstanding course which I completed 3 years ago. Have Mr. Watkins write your guidelines and require any civil servant and politician involved in environmental assessment to complete the course.

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

See answer to Question 1.

Page 5

The chart on page 5 refers to:

"application fee"

Application fees are far too low. This is an untapped source of revenue which could be invested in creating better public awareness of, and participation in, the environmental assessment process. Right now the fee is just the cost of admission since all the efforts of government are funded by sunk costs. That is, you already have a critical mass of employees who are getting paid regardless of the size of the fee.

"local newspaper"

Advertising EAPs only in local newspapers is archaic. All Manitobans have a stake in the whole of our environment. Limited advertising implies that the government is discouraging input and is undemocratic. Use increased fees to pay for the extra cost.

"Does public concern warrant a public hearing?"

This is often the stage of an EAP where the public feels the most abused and disenfranchised. Somewhere a public servant, or group of them, refuses to hold a public hearing even in the face of public outrage. Usually, this involves a local project that has alarmed residents who can be kicked to the side because, well because they can. Manitoba, that leader in environmental protection (see page 4), has done this with tragic regularity since 1988.

Page 6

I am unconvinced that the Technical Advisory Committees offer any reliable, substantive input into the EAP process. This is because civil servants no longer see themselves as informed opinions in the context of career politicians. They are loathe to rain on any parade that has its origins at 450 Broadway. In worst cases, such as pig factories, they have actually promoted environmental degradation while hiding behind their own positions of influence. Putting the TAC in the new Environment Act will only discourage public participation which is already dismal.

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

Nothing. The TAC as we know it should be disbanded.

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

Yes, a new TAC, perhaps with a new name, should be democratically comprised such that it contains representatives from the public including people like Dan Soprovich, Anne Lindsey and Brian Pannell.

Page 7 LICENSING PROCESS

The licensing process claims to exclude the mineral exploration and petroleum sectors. I see no reason why the Environmental Approvals Branch cannot use the legislated definitions of "manufacturing and industrial plant", "milling facility", "mine", "mineral" and "pipe line", in the context of legislated Class 1 developments to include these industries. They are most certainly in the business of manufacturing and industrial activities.

Mining and petroleum companies have taken refuge from legitimate environmental regulation because intransigent politicians and compliant public servants have allowed them to hide behind Advance Exploration Permits which allow for environmental degradation in advance of environmental assessment. That this has been allowed for a quarter of a century under The Environment Act, and Manitoba's version of leadership, is disgraceful.

Page 8

It is not my experience that Class 1, 2, and 3 proposals receive the same level of scrutiny. In fact, my sense is that the developments defined in Classes 1 and 2 are there to facilitate less scrutiny and faster approval.

Questions

5. **Should we maintain the current classes of development? If not, what other system should be considered?**

Whatever system is used it should not allow proponents to escape review just because their endeavor is not specifically listed. Your lawyers can craft the wording.

6. **Should there be flexibility.....technological advancements?**

Yes, but the flexibility should be biased towards more assessment, not less.

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

Sorry, I do not understand this question. In fact, my answers to Question 5 and 6 are inadequate. This consultation should include interaction with public servants and politicians so that respondents can clarify points like this.

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

It is unwise that The Environment Act licenses are issued indefinitely. There should be an expiry date based on the relative risk of a development. The fees should be paid again and a re-assessment performed. At that time a scorecard on the proponent's erstwhile performance should be developed. Changes should never be influenced by profit targets as was the case with Louisiana-Pacific.

Page 9 ENFORCEMENT

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

The appeals process is not effective. How many appeals have been successful? None? But then, the assessment process is predictably biased in favour of proponents. Why would we expect anything different from an appeals process that is rarely invoked and never changes anything?

Enforcement is sparse. Penalties are rare. This situation results from the window-dressing application of The Environment Act. There is no significant cash devoted to enforcement and even if there was, there is no political or civil service desire to pursue compliance. Most jurisdictions get their shorts more in a knot over parking enforcement than we do about environmental compliance.

Questions

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

Just do it!

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

Expand them and invoke them when given reason. It strains credibility to accept that proponents have performed so well that penalties are so rare.

Pages 10 and 11 PUBLIC ENGAGEMENT

Public consultation and feedback is dismal. This exercise has drawn the grand total of 25 responses, some of which, no doubt, have been from industrial organizations seeking to limit their exposure to reasonable environmental constraints. They do not count as "public".

The claim that Manitoba's public engagement policy is "robust" is nonsense.

And how has "information technology" helped? Conservation has a website onto which is loaded 300-page EAPs, and we are supposed to sit in front of a screen to analyze such voluminous documents that often have charts and figures. It is not possible, so people like me seek out hard copies and are made to feel guilty about "a large volume of paper copies" while HudBay digs a mine in a provincial park near Caribou habitat. The public is not being "effectively informed" by the website.

Questions

12. **Are current forms of communication effective?**

No. Stop using just local newspapers for what you incorrectly perceive as only local issues. The environment has no boundaries definable by newspaper subscriptions, and if you truly aspire to "robust" public engagement local coverage is always inadequate.

There must be a return to the deposit of hard copies in libraries around the province. I accept the desirability of reducing paper usage, therefore, EAPs of, say, less than 25 pages can be mounted on the website only. Anything more needs a hard copy (on 100% post-consumer recycled paper) to ensure that the reader can actually understand what it says. All the end of the process the hard copy can be recycled.

The costs for the preparation, distribution and recycling of hard copies should be borne by the proponent.

I must admit that I was unaware of a subscription process that provided updates from the registry. I have often wondered why people like me who regularly respond to EAPs are not on an e-mail list informing us of new proposals as a matter of course. Does the subscription process offer this?

Manitobans are impossibly disconnected from the EAP process, notwithstanding the subscription possibility. The proof is in the utterly dismal response to this consultation.

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

Yes. Hold public workshops to teach people what The Environment Act says. Teach them how to respond to EAPs. Elevate more reviews to public hearings. Do not simply accept submissions without personalized follow-up. Engage responders. For those few of us who make submissions create an e-mail list to inform us of new EAPs. A Citizens' Advisory Committee would help level the playing field. But the best way to get the public's attention would be to deny a few EAPs that deserve rejection, instead of pandering to the proponents, such as at Hay Point.

Page 11 FINAL COMMENTS

The Province of Manitoba often behaves as if it was a co-proponent to an EAP. Ministers must stop speaking patronizingly of proposals that have not yet been licenced. This was the case with the Big Pig factories, the Tim Hortons camp in the Whiteshell and the HudBay Mine in Grass River. Such inappropriate behavior chills public participation.

All Parks Management Plans and Municipal Development Plans should be subject to licensing under The Environment Act.

The Auditor-General should audit Manitoba Conservation regularly.

Host a public workshop, in partnership with the Manitoba Law Reform Commission, to discuss this Environment Act Consultation.

7.

Yours truly,



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