

ENVIRONMENT ACT CONSULTATION:

THE ROAD TO ENHANCING ENVIRONMENTAL
PROTECTION IN MANITOBA



INTRODUCTION

Environmental protection is a key priority for Manitobans; the importance of environmental stewardship is reflected in the government's policy and is described in "TomorrowNow - Manitoba's Green Plan." Since 1988, *The Environment Act* has served as the framework for environmental protection while supporting economic development. The act provides further opportunities for Manitobans to actively participate in the environmental assessment and licensing processes, ensuring that citizens' perspectives and values are considered in decisions that affect the quality of the environment.

One of the commitments made in TomorrowNow – Manitoba's Green Plan is to conduct a public consultation on developing new protocols for environmental assessments in Manitoba. The purpose of undertaking such a review is to ensure that the act continues to provide an effective framework for environmental protection and enforcement, and reflects the values and technologies of today's society. This document will provide a basis for the consultation process outlined in TomorrowNow – Manitoba's Green Plan. All Manitobans are invited and encouraged to provide their input.

As depicted in **Figure 1**, the scope of this review is defined through four pillars of environmental protection and stewardship. All four of these pillars must be effective, in order to achieve environmental protection in Manitoba.

1. **The Environmental Assessment Process** - project assessment prior to the licensing decision.
2. **The Licensing Process** - the licensing decision and prescribed mitigation based on the assessment of environmental and human health impacts.
3. **The Enforcement Process** - compliance with licence conditions.
4. **Public Engagement** - reflection of public values in environmental decisions.

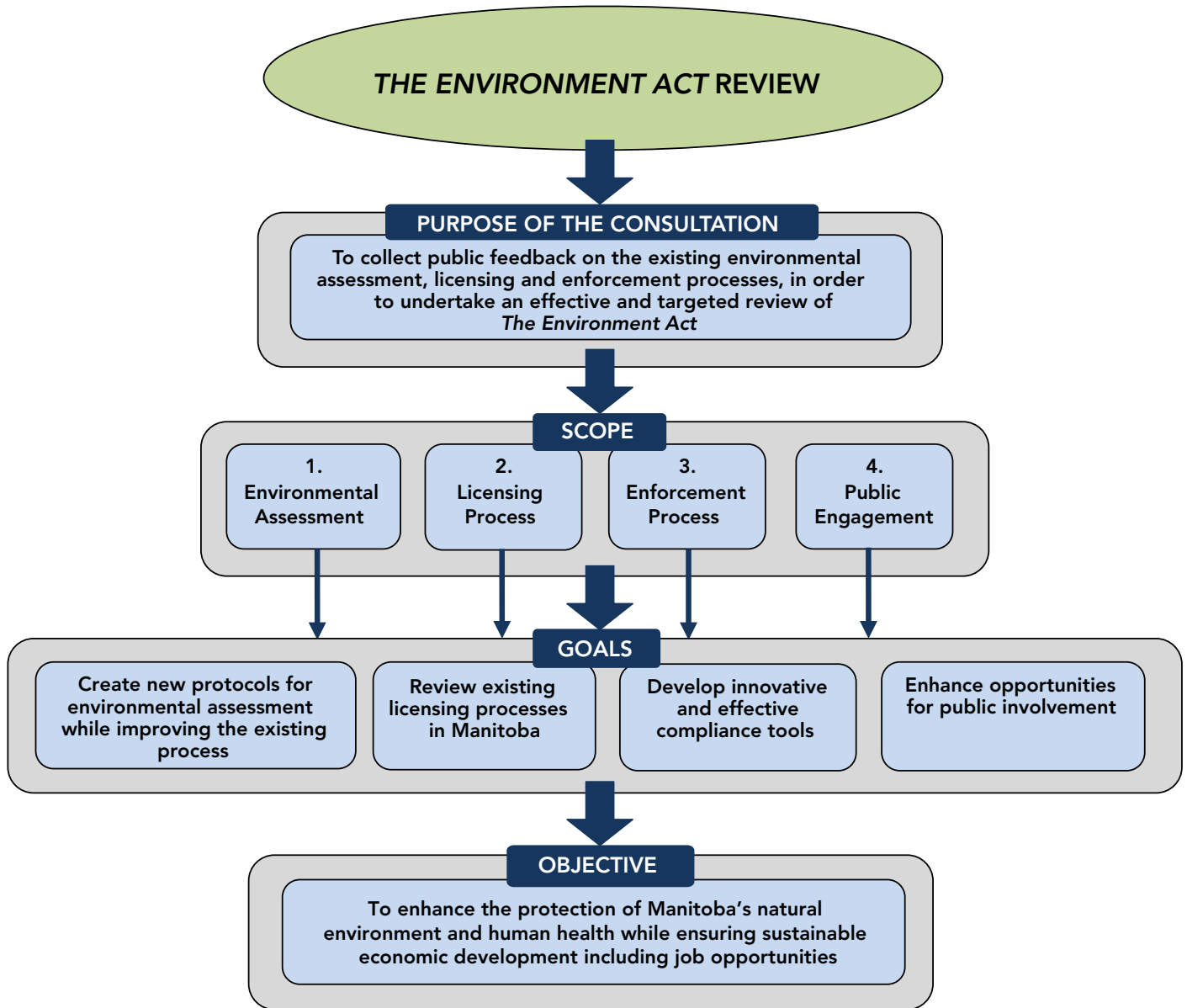
EXECUTIVE SUMMARY

The review of *The Environment Act* proposes to:

- Enhance the generic set of Environmental Impact Statement (EIS) guidelines to reflect state of the art environmental assessment practices and consider cumulative effects, alternatives assessment and/or climate change effects
- Formalize the role of the Technical Advisory Committee (TAC) by including it in the act
- Evaluate how each class of development is defined and how developments are classified
- Create greater flexibility in the act as to when developments should be brought under the licensing regime
- Ensure that the act be capable of addressing emerging industries and activities
- Allow for periodic review of licences and licensing conditions that would allow licensing conditions to be added or removed
- Continue to develop innovative compliance tools that will increase accountability of the polluter
- Improve the public engagement process to reflect changes in information technology
- Facilitate a positive contribution to sustainability
- Remove any duplication within the environmental assessment and review process.



Figure 1: Rationale for *The Environment Act* Review



THE PROGRESSION OF ENVIRONMENTAL PROTECTION IN MANITOBA

Manitoba has been a leader in environmental protection for many decades. *The Environment Act* was proclaimed on March 31, 1988, repealing the 1976 *Clean Environment Act*, and modernizing environmental assessment to meet the standards of the time.

The former *Clean Environment Act* primarily focused on pollution-related activities. The current act requires environmental assessment and licensing for projects listed in the Classes of Development Regulation, extending beyond pollution-related activities. These projects involve land use and/or resource development that may potentially have environmental and/or human health impacts. An overview of the assessment process is provided in **Figure 2a**, below.

The purposes of the act are still applicable today. However, it is desirable to take into account recent advancements in environmental protection and the new challenges and opportunities facing our environment such as cumulative effects, climate change, advances in technology and modern resource development. Additionally, a review will provide an opportunity to enhance existing tools and potentially identify new tools to protect the environment and human health, benefiting the present and future generations of Manitoba.

1. Environmental Assessment

a) Environmental Assessment Guidelines

Environmental assessment guidelines are provided to all proponents, to assist them in preparing a suitable development proposal, containing complete information. A proposal must identify the environmental and human health effects of a project, as well as necessary mitigation measures. A set of Environment Act Proposal Report Guidelines has been developed and in general, is adequate for addressing the assessment and licensing needs of most proposals. For larger, more complex and/or sensitive proposals, it may be necessary to prescribe a more comprehensive, project-specific set of guidelines. In all cases, proponents use the guidelines approved by the government to prepare an Environmental Impact Statement (EIS).

The project-specific guidelines of an EIS account for the environmental and human health components and effects of a project. These guidelines may be developed by the government or by the proponent. In either case, a draft guidelines document is prepared and is screened by both the public and TAC. Comments on the document are solicited before it is finalized and TAC or the public can recommend any requirements that may not have been included.

What we propose to enhance/improve

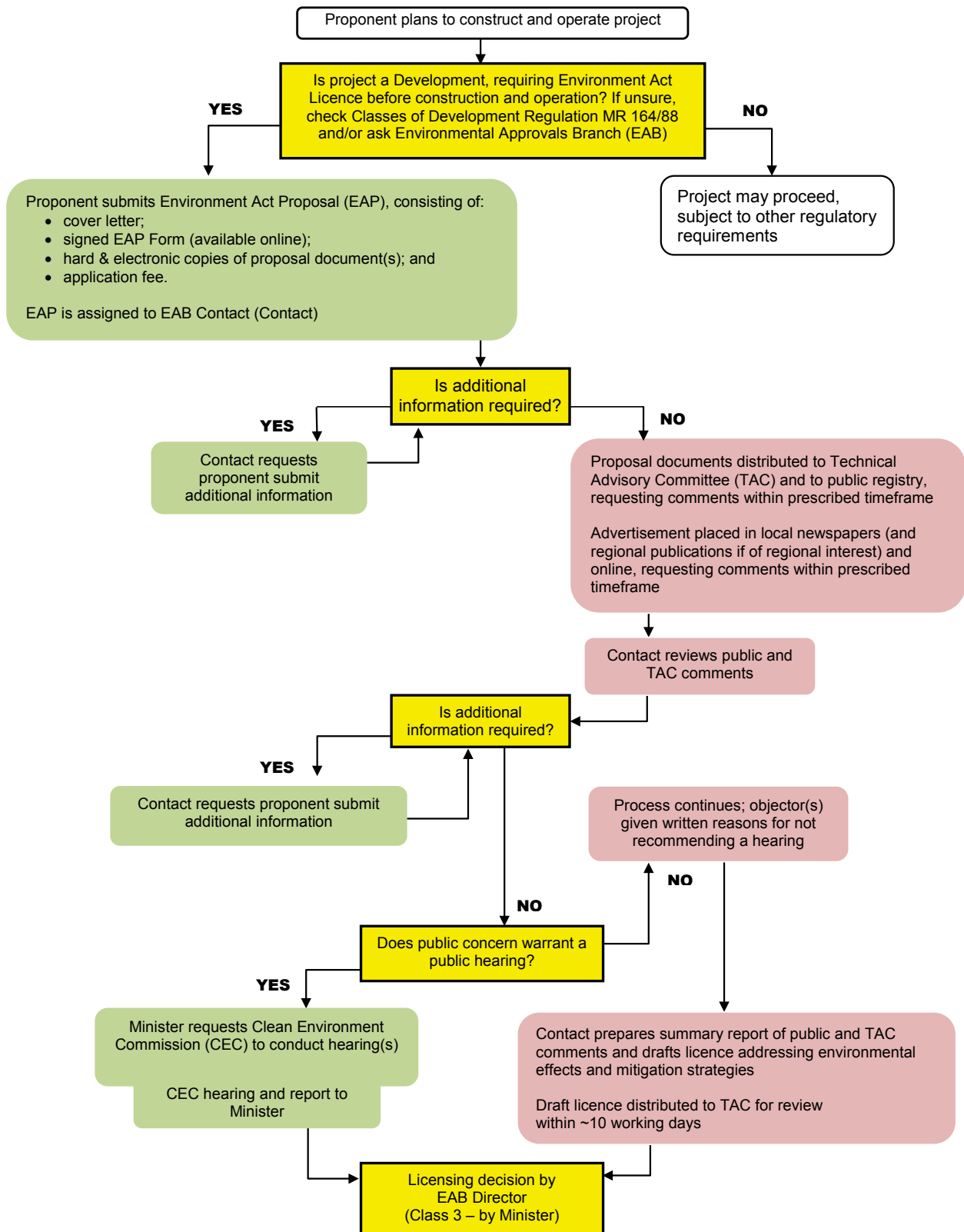
Over the last few years, it has been suggested that the generic set of EIS guidelines should be enhanced to reflect state-of-the-art environmental assessment practices and considerations such as cumulative effects, alternatives assessment and/or climate change effects. While other areas may be considered, it is important to retain flexibility within the guidelines to ensure that they remain project-specific. The availability of improved generic guidelines would simultaneously increase the comprehensiveness of acceptable environmental assessment and EIS reports, and decrease real and perceived deficiencies in these reports, which form the backbone of the application and licensing decision.

QUESTIONS

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?



Figure 2a: Overview of the Environmental Assessment Process



b) Importance of the Technical Advisory Committee

At the beginning of the environmental assessment process, an individual seeking approval for a development project, referred to as a proponent, is required to submit an environment act proposal. Following a technical review of the proposal by the government's Environmental Approvals branch, it is distributed to a Technical Advisory Committee for their review, and is advertised to invite the public to also provide comments and/or concerns.

Currently, the environmental assessment and licensing process includes a technical review by provincial and federal government specialists referred to as the Technical Advisory Committee (TAC). TAC members are experts in a wide range of fields and they provide a very high level of scrutiny to each proposed development, which is critical in ensuring environmental protection.

Their input ensures that each and every component of the ecosystem is considered in the environmental assessment and licensing decision of any proposed development in the province. Along with public feedback, TAC comments inform the government's final licensing decision.

All submitted applications, supporting documents and assessment reports are posted electronically on the public registry. The registry facilitates transparency in the process and enhances public access to information concerning the proposal.

What we propose to enhance/improve

The TAC has always been integral to the environmental assessment and licensing process; however, the current act does not specifically refer to the TAC. It is important to ensure permanency of the TAC within the act. As such, we propose to formalize the role of the TAC by including it in the act.

QUESTIONS

3. What should be included in the roles and responsibilities of the TAC?
4. Are there any other agencies that should be included as representatives on the TAC?

DID YOU KNOW?

In addition to the 1,200 environmental orders issued under Manitoba's former *Clean Environment Act*, nearly 1,900 licences have been administered in the 25+ years since *The Environment Act* came into force.

An expansion in the number of licences illustrates the wide application of *The Environment Act* and highlights its important role in protecting Manitoba's environment.



2. Licensing Process

a) The Current Licensing Process: Classes of Development

A wide range of activities and projects fall within the meaning of the term “development” as it is defined in the act. However, only activities listed in the Classes of Development Regulation are subject to the licensing regime of the act. Class 1 and 2 licensing decisions are usually made by the Environmental Approvals Branch director, while Class 3 decisions are made by the Minister as illustrated in **Figure 2b**.

In the 25+ years that the act has been in force, the needs and values of society have evolved leading to the emergence of new industries that were not included in the act when it came into force. Technological advances over the last few decades have contributed to increased activity in Manitoba’s mineral exploration and petroleum sectors, which are currently not covered by the licensing regime of the act. Increased environmental awareness has also led to the development of industries around new initiatives such as commercial composting, energy development and emerging environmental services.

DID YOU KNOW?

Some examples of developments include:

Class 1:

- Manufacturing Plants
- Food Processing Plants
- Concrete and Asphalt Plants
- Feed Mill/Seed Cleaning Plants

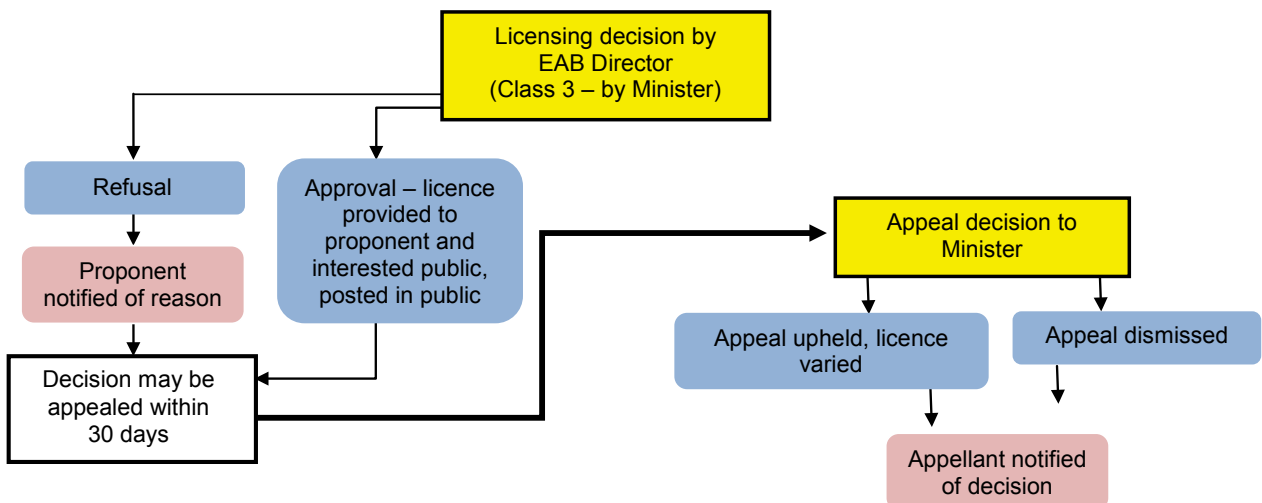
Class 2:

- Sewage Treatment Plants
- Mining Developments
- Irrigation Systems
- Electrical Transmission Lines
- New Two Lane Highways and Winter Roads

Class 3:

- Major Hydro Developments
- Major Flood Control
- New Four Lane Highways

Figure 2b: Overview of the Licensing and Appeal Process



What we propose to enhance/improve

In the interest of simplifying and clarifying how and when developments fall within the licensing requirements of the act, it may be valuable to evaluate how each category is defined and how developments are classified. Furthermore, it may be useful to create greater flexibility in the act as to when developments should be brought under the licensing regime. In order to maintain an effective environmental and human health protection system in Manitoba, it is important that the act be capable of addressing emerging industries and activities.

DID YOU KNOW?

Even though developments are categorized, the environmental assessment and licensing process requires the same level of scrutiny and rigour when reviewing Class 1, 2 and 3 proposals.

QUESTIONS

5. **Should we maintain the current Classes of Development?
If not, what other system should be considered?**
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?**
7. **Which activities should be included in the licensing process?**

b) A Process for Updating the Terms and Conditions of Existing Licences

Due to the long-term nature of many developments, *The Environment Act* licences are usually issued indefinitely. Over time, scientific knowledge evolves, and what is considered to be environmentally acceptable to society may change as a result. Some licence requirements may become obsolete, while others may need to be added or enhanced. It is important that licences can be revisited and potentially updated to incorporate the most up-to-date environmental information, providing the flexibility to add or remove terms or conditions as needed.

Under the act, there is no specific authority to review or change the terms or conditions of a licence after it has been issued. The only opportunity for the review and modification of a licence occurs when the proponent decides to expand or alter the development and consequently is required to file a new proposal. For many licensees, this may not occur for many years, if ever.

What we propose to enhance/improve

It may be beneficial to allow for periodic reviews of licences and licensing conditions to evaluate whether the terms and conditions remain sufficient for addressing environmental and human health concerns. The ability to add or remove licensing conditions throughout the life of a development will support the delivery of a flexible and responsive licensing system.

QUESTION

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



c) Appeal Process

Once a licensing decision has been made, Manitoba's environment act provides an opportunity for any stakeholder to appeal that decision. Under the act, decisions made by the director may be appealed to the minister, and some decisions made by the minister may be appealed to Cabinet. In either case, appellants must provide written reasons for their appeal within 30 days of the decision.

QUESTIONS

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

DID YOU KNOW?

Manitoba is one of the only provinces that has an appeal process for environmental licensing decisions.

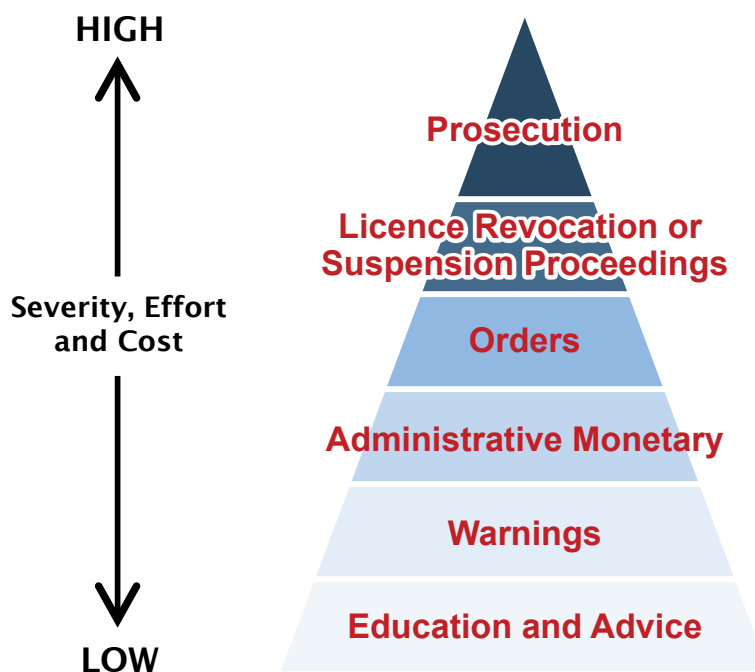
3. Enforcement

a) Compliance Tools

Without enforcement measures, environmental assessment and licensing processes cannot be relied upon, exclusively, to protect the environment. It is critical to have an array of enforcement measures that ensure compliance with processes to effectively protect the environment. Compliance tools are used to safeguard Manitoba's environment by enforcing environmental legislation and promoting responsible environmental stewardship.

In addition to a judge suspending or revoking all or part of an environmental licence, individuals and corporations in Manitoba may also be subject to fines and/or imprisonment. **Figure 3** illustrates a spectrum of enforcement options that may be used to encourage individuals and/or corporations to comply with environmental regulation.

Figure 3: Spectrum of Enforcement Options



Manitoba plans to diversify the available enforcement options by looking to alternative penalties beyond the scope of monetary fines and imprisonment. For example, in 2009, Manitoba amended the act to include an innovative compliance tool called the Environmental Protection Order. Environmental Protection Orders require a person that is responsible for the release of a pollutant to make necessary changes to address the environmental issue.

What we propose to enhance/improve

Manitoba will continue developing innovative compliance tools that will increase accountability of the polluter such as:

1. Administrative penalty provisions
2. Judicial orders
3. Injunctions
4. "Stop work" orders

QUESTIONS

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.

4. Public Engagement

a) Public Consultation

Manitoba Conservation and Water Stewardship recognizes the value of providing the public with opportunities to participate in all aspects of environmental protection. A public registry has been established to facilitate the review of environment act proposals through easy online access to application materials. Other opportunities for the public to participate in environmental protection include Clean Environment Commission hearings, the complaints systems, emergency reporting, and, the review of guidelines and/or new policies such as the peat moratorium and the new Lake Winnipeg Regulation.

In 2013, the public registry system was updated, making a project's environmental assessment and licensing information available online. This change reflects a strong public preference to access information online and to eliminate a large volume of paper copies. Members of the public may subscribe to the registry and receive regular updates when new information is posted.

DID YOU KNOW?

Many other jurisdictions have successfully used administrative penalty provisions to hold polluters accountable.

Administrative penalties enforce compliance with regulatory legislation and avoid unnecessary judicial procedures. They are monetary penalties assessed and imposed on licensees that fail to comply with the terms of their licence.



What we propose to enhance/improve

Manitoba's robust public engagement process has evolved to reflect changes in information technology. To keep this process relevant and collaborative, it is important that the public continue to be effectively informed so that useful feedback can be obtained.

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?

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

FINAL COMMENTS

Thank you for taking the time to provide us with your feedback. Your input helps to ensure that *The Environment Act* remains relevant and reflects the environmental and human health values of all Manitobans today. Please provide us with any additional comments in regards to issues that you feel may not have been addressed.

- Other Comments:

Deadline for your comments is September 30, 2014

If you have any questions, please contact:

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