



MINING ASSOCIATION OF MANITOBA INC. (MAMI)
MINES ACCIDENT PREVENTION ASSOCIATION OF MANITOBA (MAPAM)

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October 16, 2014

Honorable Gord Mackintosh
Minister of Conservation and Water Stewardship
Province of Manitoba
Room 330
Legislative Building
450 Broadway
Winnipeg, Manitoba
R3C 0V8

Dear Minister;

Please find attached the response of the Mining Association of Manitoba Inc. with respect to the *Environment Act: Consultation – the Road to Enhancing Environmental Protection in Manitoba*. The balance between environmental protection and economic development is vital to the future of all Manitobans. We thank you for giving consideration to the views submitted.

Respectfully,

Ed Huebert
Executive Vice President
MINING ASSOCIATION OF MANITOBA INC.

Cc: Hon. Dave Chomiak
Lovro Paulic
Grant Doak
Hugh Eliasson
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Attach:

**MINING ASSOCIATION OF MANITOBA INC
700 – 305 BROADWAY, WINNIPEG, MANITOBA
RESPONSE TO
ENVIRONMENT ACT CONSULTATION
SUBMITTED OCTOBER 16, 2014**

TO

**MANITOBA CONSERVATION AND WATER STEWARDSHIP
BOX 38-200 SAULTEAUX CRESCENT**

Mining Sector Background

The Mining Association of Manitoba Inc. (MAMI “the association”) is a not for profit trade association established in 1940 that represents the collective interests of Manitoba’s mineral exploration and mining industries. This response is responding to the Environment Act Consultation document released by the Government of Manitoba as part of the *Tomorrow Now initiative*.

The mining industry (metals) of Manitoba represents a workforce of about 4,500 and accounts for about 3.5% of Manitoba’s gross domestic product (GDP). In 2013, Manitoba’s eight operating metal mines, located in Flin Flon, Snow Lake, Thompson, Bissett and Bernic Lake accounted for \$1.11 Billion. The primary metals produced include: nickel, copper, zinc, gold and pollucite. Mining is the fourth largest primary industry in Manitoba after agriculture, hydro development and oil production. Non-metal mineral production which includes aggregates, lime and dimension stone accounted for \$226 million bringing Manitoba’s total mineral production to \$1.3 Billion for 2013; this ranks Manitoba 7th nationally with 3% of Canada’s gross production.

Mining is a major industry in northern Manitoba and the region’s largest employer. Manitoba’s mining industry generates a series of spin-off industries across Manitoba including rail, trucking, construction, engineering, environmental services and legal services.

Mines in Manitoba that have undergone assessment, licensing and development for over the past thirty years generally have been of small to moderate scale compared to elsewhere in Canada. Current operating mines in Manitoba have mining rates ranging from 1,000 tonnes per day (tpd) to 5,800 tpd. In contrast, British Columbia has several mines that exceed a mining rate of 60,000 tpd with one currently operating at 135,000 tpd.

The mining industry supports the goal of enhancing environmental protection in Manitoba and believes that over the last twenty years great strides have been achieved. The association supports reforms that will lead to certainty and predictability of process and avoids unnecessary duplication. The balance between environmental protection and economic development can be met. Comments made in the Consultation Document do however raise concerns.

- Manitoba needs to be competitive with other Canadian provincial regulatory frameworks. Duplication of processes can have a chilling effect on investment. The association feels strongly that the current permitting regime for mineral exploration, including requiring approval of closure plans for advanced exploration projects satisfies the need for regulatory oversight.
- Before engaging in advanced mineral exploration, the proponent must provide the Director of Mines with a comprehensive mine closure plan and financial assurance at a level required by the Director of Mines. This requirement achieves the goal of considering in advance any impact that the advanced exploration project may have on the environment and planning adequately for avoidance, mitigation or remediation of that effect. We believe that the time and costs that would be required for additional or more public processes could discourage investment. We suggest instead that legislative changes be made to formalize the role (currently played on an informal basis) of the Director of Environmental Approvals in advising the Director of Mines on that decision.

1.0 Environmental Assessment

QUESTIONS

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

The Mining Association of Manitoba Inc. suggests that there are four areas where improvements could be achieved. The association is also commenting on the role of the Director of Environmental Approvals. First, this is the formal identification and setting of timelines, needs to be embedded in the process at key decision points. There are examples in Canada where the environmental assessment is subject to defined time limits. That does not mean every project advances to the next stage but the proponent knows that there are defined stages and timelines.

The second area of improvement is to adequately resource the Environmental Approvals branch to be able to undertake the issues being assigned to this Branch. The same is also true for the Manitoba Clean Environment Commission. If additional responsibilities are being considered for the Environmental Approvals Branch and the Manitoba Clean Environment Commission there needs to be a strong assurance by the Manitoba Government that sufficient funds and resources be dedicated to meet any expanded scope of any expanded roles and responsibilities that may be generated by an altered Environment Act and to meet the necessary timelines.

The third area of improvement is the need to be consideration or how recommendations applied to one project may cross over inadvertently to other communities and sectors. The need or capacity for a Crown corporation undertaking a major public project to comply with a Manitoba Clean Environment Commission recommendation may not easily carry over to other sectors. The association also strongly recommends that the Province of Manitoba consider how a decision focused on a specific project may impact on other provincial interests. For example, the July 2, 2014 announcement on a proposed Seal

River watershed protection area made no comment on whether the Province of Manitoba would undertake a mineral resources assessment. This is an area that may hold strong economic prospects to Manitobans and needs to be given greater public oversight considering the loss of economic development opportunities.

Fourth, defined consultation roles, responsibilities and deliverables need to be clearly stated as Manitoba Government operating policies. The Director's ability to fully consider environmental factors should be continued and the issuance of prescriptive instructions on the technical requirements is a serious concern. The discretionary authority of the Director to respond to scoping issues needs to be preserved on matters of public interest as opposed to having a prescriptive policy imposed by procedure.

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

The association recognizes that there have been improvements in environmental assessment practices in Manitoba in recent years. When Manitoba Conservation and Water Stewardship considers applying any such practices we strongly urge that such proposed changes be introduced through either discussion papers or better yet a COSDI type process that brings together a broad range of stakeholders including industry.

Manitoba has a strong track record of positive outcomes when a range of perspectives are brought together to the stakeholders. In the association's recent response to the Manitoba Law Reform Commission the response tabled noted that regional strategic environmental assessment has different meanings in Europe than as practiced elsewhere in Canada. Participatory discussion processes will be a very strong requirement to address the second question.

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

The association supports the Technical Advisory Committee process provided. It does allow for provincial and federal government specialists to add a layer of additional oversight. Timelines for review should be stipulated

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

The agencies that should be included are those provincial and federal bodies that can speak directly to the project being assessed.

2.0 Licensing Process

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

A scaled approach to assessment still makes sense and most the types of development remain current. The association strongly recommends that the current system be maintained. With respect to

comments in the Consultation Paper, a statement is made that directs attention to mineral exploration. ***“Technological advances over the last few decades have contributed to increased activity in Manitoba’s mineral exploration and petroleum sectors, which are not currently covered by the licensing regime of the Act page 7.***

Mineral exploration is both a very low impact and of a temporary basis. The association has been working with both Manitoba Minerals Resources and Manitoba Conservation and Water Stewardship in developing a Manitoba Mineral Exploration Guideline that identifies best management practices (attached in Draft Form).

Longer term mineral exploration may require an Advanced Exploration Permit (AEP) which has extensive regulatory obligations placed on a mining company who apply for an AEP. Very few exploration projects reach this stage. While advanced exploration is not licensed under the Environment Act it is regulated under the Manitoba’s, Mines and Minerals Act.

Provisions for an AEP can include a financial reclamation contribution arrangement being required before work is allowed to commence. On a last note, internationally mineral exploration levels have dropped substantially over the past several years. Manitoba is now witnessing mineral exploration expenditure levels that have not been seen since the 1990s. There is no indication that the market has hit bottom and may drop even further.

Requiring mineral exploration to be licensed under the Manitoba Environment Act in addition to conforming to the Manitoba Mines and Minerals Act could have a very damaging effect to Manitoba’s economy in raising capital to invest in Manitoba in an economic time that is already precarious and depressed. While the association cannot speak for the petroleum sector we strongly urge the Province of Manitoba not to add mineral exploration to the licensing process.

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?

This Association respectfully suggests that this provision already exists in Section 41(1) and such application could be made to the Minister. Regulations

41(1) For the purpose of carrying out the provisions of this Act according to their intent, the Lieutenant Governor in Council may make such regulations and orders as are ancillary thereto and are not inconsistent therewith and every regulation or order made under and in accordance with the authority granted by, this section has the force of law; and, without restricting the generality of the foregoing, the Lieutenant Governor in Council may make regulations and orders,

(a) respecting the classification of development in class 1, class 2 or class 3 developments, and the setting out of assessment process for each class of development;

7. What activities should be included in the licensing process

There are existing regulatory processes in place that are functioning they should be allowed to continue. It served Manitoba well with respect to the hog industry be included in the process and most likely could be applied in a similar manner if circumstances justified such action.

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

With respect to mineral leases, land use plans, regulatory conditions applied to mineral leases and other instruments have undergone continuous change over time and will continue to do so into the foreseeable future. In 25 years, there have been only 9 new mines developed in Manitoba, several of which were very small operations that had small footprints and operated for relatively short periods of time.

Manitoba already has the ability to revise operating conditions. Industry acknowledges that changes may be required and as both society and industry are made aware of emerging conditions, as was the case with climate change. In 1994, firms did not measure their Green House Emissions. Today they do. In fact the Mining Association of Canada's *Toward Sustainable Mining* makes GHG monitoring and management plan a condition of certification. The main concern is that if there are two or more systems that can review, renew or alter operating conditions in Manitoba there may be unnecessary duplications that could lead to uncertainty and unpredictability of process. Uncertainty does impact on future investment decisions.

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

As noted in the Consultation Paper, the current system is appealable to the Minister; failing this line of appeal, a person affected may appeal to the Lieutenant Governor in Council. A judicial review is still an option. These options appear to be very senior and substantial forms of appeal, within the current regulatory regime and are comparable with other Canadian jurisdictions.

Appeal of minister's decision

28(1) a person who is affected by a decision of the minister made under section 10, 11 or 12 in relation to a proposal or a decision made under subsection 14(2) may file an appeal in writing with the minister. The appeal must set out the reasons for the appeal and must be filed within 30 days after the date of the decision.

Appeal to Lieutenant Governor in Council

28(1.1) The minister must refer the appeal to the Lieutenant Governor in Council.

Disposition of appeal

28(2) When an appeal is referred to the Lieutenant Governor in Council, it may, on such considerations as it deems advisable,

- (a) in the case of an appeal of the minister's decision not to request a public meeting or hearing on a proposal, request the commission to hold a public meeting or hearing on the proposal;
- (b) refer the matter back to the minister for reconsideration;
- (c) make any decision that in its opinion ought to have been made by the minister; or
- (d) quash or vary the decision under appeal, or dismiss the appeal.

3.0 Enforcement

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

The association provided comments to the Manitoba Law Reform Commission in response to Issue 18: What changes to the Environment Act might help to improve compliance and enforcement? Options for reform include mandatory monitoring and publication of monitoring information, the power to order audits, routine program evaluations and enhanced enforcement techniques.

Environmental protection compliance and enforcement in Manitoba is larger than the Environment Act. For example the Water Resources Conservation Act takes precedence. There are federal monitoring and reporting processes that still continue as well.

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

The Consultation paper calls for innovative compliance tools and four examples are suggested including: (1) Administrative penalty provisions, (2) judicial orders, (3) Injunctions and (4) stop work orders. Pursuant to various conditions contained within the Manitoba Mines and Minerals Act (2) judicial orders, (3) injunctions and (4) stop work orders already exist as enforcement options.

With respect to Administrative Monetary Options we would request that in order to more fully comment that stakeholders be provided with a more substantive proposal to review.

4.0 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?

No additional suggestions.

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

There have been several processes in recent years where opportunities for public participation have been offered. This contributed toward the process setting altered conditions to the Environment License that was being sought. Ultimately the recommendations sent to the Minister for approval that benefited from effective public engagement. It is important to recognize that there are existing positive processes in place.

Final Comments

The Consultation on Sustainable Development Implementation (COSDI) process recognized that environmental objectives may be directed through several regulatory processes, land use planning, environmental assessment and licensing based on the principles of sustainable development. Manitoba Conservation and Water Stewardship accepted the recommendations of the COSDI report in 2001 by the late Minister Oscar Lathlin. The comments contained in this submission are based on the principles of COSDI.

MINING ASSOCIATION OF MANITOBA INC.

October 16, 2014