

September 22, 2014

Manitoba Conservation and
Water Stewardship
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RE: Environment Act Review

The Clean Environment Commission (CEC) welcomes the opportunity to provide input into the review of *The Environment Act*, currently underway. (In our most recent report on the Keeyask Generation Project, we noted that the timing of this review had been advanced, which we consider to be a very positive step.)

For many years, we have provided in a number of reports, the Commission's view on the state of environmental assessment in Manitoba. We have also provided our advice on how this process might be improved.

In this submission, we will restate some of our advice, as well as address the questions posed in the document produced by the Department of Conservation and Water Stewardship. Our comments will be based on experience gained over the past decade.

Past Advice:

In Commission reports, it has become common practice for the Commission to offer advice and (what we call) non-licensing recommendations. Over the last decade, we have offered the following to the Government of Manitoba, often repeated in a number of reports:

1. *The Government of Manitoba enhance the practice of environmental assessment by requiring higher standards of performance.*

- In earlier reports, the Commission believed that the best way to achieve this would be to enact environmental assessment legislation. While we still believe that the statutory route would be best, we do recognize that other means could be equally effective. These include: regulation, practice

directions, protocols or other policy measures. What is important is to develop environmental assessment standards appropriate for Manitoba.

- To ensure that these standards are known and followed, the Province should provide comprehensive and clear guidance for proponents, consultants and practitioners. This could include establishing protocols for best professional practice.

The new environmental assessment process must, at a minimum, address:

- use of traditional and local knowledge,
- selection of appropriate valued environmental components,
- establishment of baseline conditions, and
- establishment of thresholds in the conduct of environmental assessments.

2. *Cumulative Effects Assessment*

The Commission has long been frustrated by the practice of cumulative effects assessment (CEA) in Manitoba. At the core is our view that proponents and practitioners have taken a far-too-narrow approach, which leaves our environment at risk.

The practice of CEA, in Canada, generally follows guidelines developed by the Canadian Environmental Assessment Agency in 1999. While these Guidelines are comprehensive, it is possible to interpret them very narrowly and still be in compliance.

In recent years, there has been much criticism across the country about the practice of CEA. At the same time, there has been considerable advancement in the science of CEA.

The Commission believes that Manitoba should go beyond the minimal standard of the 1999 CEA guidelines, by establishing provincial guidelines for cumulative effects assessment best practices and include specific direction for proponents in project guidelines. At a minimum this approach would:

- assess effects in close vicinity to the Project as well as in the regional context;
- assess effects during a longer period of time into the past and future;
- include all VECs not just those significantly affected by the current project;

- consider effects on VECs due to interactions with other actions, and not just the effects of the single action under review;
- in evaluating significance, consider other than just local, direct effects; and
- include all past, current and reasonably foreseeable actions.

We are aware that Canadian Council of Ministers of the Environment (CCME) is currently reviewing this matter and may well, in time, adopt new national guidelines.

3. *The Environment Act*

In our most recent report – on the Keeyask Generation Project – with the knowledge that the Government of Manitoba was about to undertake a legislative review, we included a longer list of issues which we believe the government must address to meet Manitoba’s needs. These include:

- Environmental Assessment – When is it required; and to what degree?
- Environmental Impact Statement – What triggers the requirement for an EIS? What are the minimum requirements of an EIS?
- Provincial Guidelines – The current legislation states that guidelines or instructions may be provided, but there is no regulation or policy that defines how this action will be implemented.
- Scoping Document – In current practice, proponent-generated scoping documents have replaced government-issued guidelines. Is this effective? What is the role of the scoping document?
- VECs – Develop criteria to guide the selection of VECs.
- Sustainability Assessment – During the Keeyask and recent hearings, it was recommended by Participants that the Commission require the proponent to conduct a sustainability assessment of the Project. This was beyond the scope of our review. But the concept is one that the Commission believes to be worthy of further consideration for future environmental assessment. This process could well go beyond just getting project approval to looking at the sustainability of the project, the tradeoffs and the balance on the socioeconomic-environmental ledger sheet.

- **Cumulative Effects Assessment – (See above.)** The Commission continues to be of the opinion that the process and practice for cumulative effects assessment needs to be defined and prescribed in Manitoba's context. The Commission also welcomes the endeavour by the CCME to determine national standards for CEA.

Staged Licensing – There were at least two other parts of the Keeyask Project that were not subject to the Commission's review, which made it difficult for the Panel to be confident about the cumulative effects of Keeyask. The Keeyask Infrastructure Project was underway before the Keeyask Generation Project was being reviewed and the Keeyask Transmission Project is awaiting licensing. Aspects of each of these other projects were referenced in regard to the effects of the Keeyask Generation Project. Taken together, all these are necessary parts of the electrical generation from the Keeyask dam. In fact, one cannot proceed without the other. It would have been more favourable if these three projects could have been considered at the same time. In such a case, the overall impacts could be better balanced. For example: a small adjustment in one element of a project may lead to a decrease in negative impacts or a positive impact on the environment in combination with the associated projects. Consideration should be given to how interrelated projects can be assessed as one or in tandem.

Discussion Document:

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

The Commission has long been of the view that environmental assessment guidelines should be comprehensive, prescriptive and consistent. To that end, we support the enhancement of a generic set of guidelines which may be augmented as needed, for larger more complex projects.

When required, the Commission would prefer to have the project specific guidelines drafted and issued by the government. In our view, government-issued guidelines carry more authority.

However, we can support proponent-generated guidelines so long as they are thorough in meeting the requirements of good environmental assessment. Proponent-generated guidelines must be fully reviewed by government and the public. And, the proponent must be required to address all of the issues identified in the final document. This requirement should be spelled out in the Act or regulations.

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

The generic guidelines should include specific requirements for compliance with conditions within the Act, as well as any other acts and regulations e.g. greenhouse gases and water quality guidelines (both in *The Environment Act*).

They should:

- Define “significant environmental effect”.
- Spell out the required elements of a Manitoba CEA. (see above)
- Specify that S1, S2 and perhaps S3 species and ecological communities, as rated by the Conservation Data Centre, be specifically addressed, not just those species that are legally designated as being at risk.
- Define what a baseline is and request rationale for the baseline that is chosen for the assessment.
- Require the identification of VECs and the rationale for their selection.
- Spell out the steps in assessing and addressing project effects, e.g. avoidance, mitigation, compensation, rehabilitation and residual impacts and require an explanation of the rationale for and effects of the resulting actions.
- Encourage restoration in response to past impacts for a value added effect.
- Require consultation results or a consultation plan. Rationale should be required for the chosen approach or why such consultation is not necessary.

As discussed above, consideration should be given to requiring a Sustainable Development assessment.

Process Guide

One way to gain a clearer benefit is to ensure that all parties – proponents, intervenors, public, etc. – fully understand the process. A comprehensive detailed guide would go a long way to meet that need.

This guide would, not only provide direction for potential proponents, but also inform the public on what a proponent is required to do and why the resulting report looks the way it does. It would specify the kind of information required, and in what detail, based on current best practices. The guide should be up-dated regularly.

It must be in plain language and easily identified and accessible on the website, with a contact for further information.

Examples are available from other jurisdictions.

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

The Commission accepts the description of the role and membership of the TAC as set out in the discussion document. We recognize the importance of the role of the TAC.

We support the suggestion to ensure the permanency of the TAC process by including it in legislation.

We believe that some thought needs to be given to the relationship between the TAC and the interested public. Should the public be given the opportunity to comment after the TAC process is completed, thus being able to comment on the TAC findings?

As well, the public needs to believe that their input at this stage is of value. Many believe that their comments are not taken seriously.

While the CEC should not be officially recognized as part of the TAC, where a proposal is likely to be referred to the Commission, direct input into the project proposal guidelines and draft reviews should be granted. This will lead to a smoother, more efficient and less costly hearing in the end. Minister Blaikie, by letter, granted the Commission such a role. It should be formalized in the statute.

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

Perhaps include academic or national experts on EA or subject areas as required to provide an outsiders view. Especially on new and emerging procedures and topics – eg. cumulative effects and climate change.

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

While the classes of development process is cumbersome and restrictive, it is not particularly relevant to our work.

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?

Yes, there should be more flexibility to add new things. We have no comment as to how.

Which activities should be included in the licensing process?

Environmental licensing should also include oil & gas and mineral exploration as a whole. There are significant environmental effects, especially cumulative effects, from these activities that are not currently addressed. The Manitoba public taxpayer ends up carrying the environmental costs of many of these impacts. There are requirements for licenses and permits from various departments and branches for specific activities but they are never considered as a whole.

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

Licenses should have a shelf life or fixed renewal date. There may be different time requirements for different activities. They should be reviewed at specific intervals or when new sector or environmental regulations come in. Old technologies should not be just grandfathered in, but should be given a grace period and if the impacts on the proponent are significant perhaps some incentives or assistance could be provided to make the change.

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

The CEC believes strongly in an effective appeals process. However, we believe that appeals to the minister or to Cabinet could easily give rise to an apprehension of bias. To ensure transparency, appeals should be done by an independent body.

This body should establish a set process, with clear instructions as to what constitutes an appeal, what the process is, how it will be judged, what the deadlines are, etc. All resulting documentation should also be made public.

The appeal process information should be clearly available on the Environmental Approvals Branch (EAB) website and linked to the appropriate reviewing body.

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

The Commission strongly supports the enforcement of environmental protections. To ensure that, necessary resources are required.

Regular random comprehensive audits of a sample of licences in a variety of sectors would help to ensure that licensees were compliant with the law. Results of these audits and any follow-up actions should be made public.

Providing reports, required under a licence, for public review could assist by providing many more sets of eyes ensuring compliance.

Environmental Auditor – In recent years Manitoba has publicly accepted and committed to implement the recommendations of a number of review committees, including the CEC, the Lake Winnipeg Stewardship Board and the Assiniboine River/Lake Manitoba flood reviews, among others.

To ensure that these commitments as well as other environmental goals are in fact put in place, Manitoba should give serious consideration to establishing an environmental auditor, charged with conducting regular audits of all of the government's stated environmental goals and commitments.

This role would be similar to that played by the Ontario Environmental Commissioner, albeit on a smaller scale.

Such an audit would strengthen the government's wide-ranging green initiatives.

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

We would support whatever measures work to ensure that provisions of the Act and licence requirements are adhered to.

11. 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?

In our experience conventional ways of advertising to the public are proving to be less and less effective. Placing an ad in the printed daily newspapers with a 30 or 60 day deadline no longer reaches a wide audience.

There is a variety of other methods that could be used alone or in concert to reach and perhaps engage a wider audience. These include social media, e-mail, local/trade newspapers, NCI and other notice boards. Most cost little particularly in comparison to daily newspaper ads.

Beyond proponents and government officials, the public registry is largely unknown to most Manitobans. Only those few who are regularly engaged in environmental concerns are aware of it.

Although, the availability of an electronic version is a great improvement, the complexity of the information provided does not necessarily resonate with new users.

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

As part of their application, proponents should be required to provide a plain language summary, limited in technical details and jargon to help the public understand the nature of the project. If members of the public then wish to examine the technical documents they can then go on to access these in electronic or printed form.

There needs to be a more proactive approach to inform the public about the overall environmental licensing and review process, where the responsibility lies and, where and how the public can participate. This could involve an outreach component.

There needs to be a generic communication program that goes on regardless of what projects are or are about to be under review. Messages should be crafted to suit the audiences

A plain language description of the entire process should be available in printed form and on the website, targeted at the general public, not just prospective proponents.

In our view, the EAB website is not conducive to easy identification of and access to relevant information in a jargon free form. (This is largely true of all government websites.) We would suggest a significant overhaul of the website to make it easier for the public to find and understand the many parts of the licensing and review process.

We suggest a tab that can be recognized as **Licensing and Review** process be prominent. Information available under this tab could include:

- Plain language summary of process with flow chart.
- Generic guidelines.
- Project specific guidelines.
- Application forms.
- Any other EA licensing information.
- Contact information for questions or help.
- Links to statutes and guidelines.

Information Overload:

In our Keeyask report, we noted that communities in the geographical area where hydroelectric development occurs have been subject to an inordinate number of meetings, workshops, negotiating sessions, etc., sometimes for more than one project, at much the same time.

Needless to say, this can lead to much confusion and frustration among the various parties. For many in the communities, there is consultation fatigue, which, in turn, may result in individuals tuning out even though they may have valid concerns; or missing an opportunity to participate because they do not understand the various processes.

Governments and proponents need to be cognizant of the impacts of so much consultation on the communities and their leadership. Current protocols should be reviewed to establish a streamlined communication process that is effective but less of a burden on the communities.

Our suggestions above about the website, with comprehensive, easy to find and easy to understand information and an outreach program may address some of this concern.

The Commission thanks Manitoba Conservation and Water Stewardship for providing and opportunity to provide input into *The Environment Act* review and we look forward to an improved and effective environmental review process.

Sincerely,



Terry Sargeant
Chair