

Manitoba Moving Away from Environment Act Licences for Forest Management Plans

Authors: John Stefaniuk, K.C.

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On February 11, 2021 the Manitoba Departments of Conservation and Climate (CC) and Agriculture and Resources Development (ARD) announced that a letter of intent had been signed by their respective Ministers to revise Manitoba's Submission Guidelines for Twenty Year Forest Management Plans (2007) (the Guidelines).



The stated “desired outcome” of the letter of intent is the development of a forest management plan approval process to allow for a single approval under The Forest Act (Manitoba). Currently, forest management plans require parallel approvals under The Forest Act (Manitoba) and The Environment Act (Manitoba). The letter of intent calls for CC and ARD to work together in developing a streamlined approval process that integrates the forest management plan and environmental review processes. The intent is to move to a “single-track approval process free of duplication”.

Currently, timber cutting that requires a forest management plan or operating plan under The Forest Act (Manitoba) is considered a “class 2 development” under the Classes of Development Regulation. As such, the forest management plan or operating plan is subject to the licensing provisions and processes provided for under Section 11 of The Environment Act (Manitoba). That process begins with the filing of a proposal, including an environmental assessment, publication, a public comment period and, if objections are received, the possibility of a public hearing process.

The letter of intent is intended to result in an agreement between the respective Ministers responsible for CC and ARD to exempt forest management plans from Environment Act licensing via Section 11(2) of that Act. Section 11(2) allows the Minister of Conservation and Climate to enter into an agreement to exempt a type of development from licensing where

the Minister is satisfied that another, existing approval process involving interested governmental departments and agencies includes public consultation, and addresses environmental issues.

The letter of intent is the product of a reference by the Minister of Conservation and Climate to the Manitoba Clean Environment Commission (CEC). The CEC was directed to complete a jurisdictional scan on the approval of forest management plans, and provide recommendations to the Minister. CEC issued its report in May of 2020, recommending the development of a single, integrated approval process.

The CEC report includes a jurisdictional review of the forestry management licensing and approval processes in the other provinces and territories. That is followed by a description of Manitoba's legislative and regulatory regime and its approval process.

The CEC devotes a significant portion of its report to conducting a "gap analysis" of the existing Guidelines with a view to identifying shortcomings of that process when compared to Environment Act licensing. The CEC recommends that elements that might be considered to be discretionary under the Guidelines be addressed in a formal ministerial agreement that meets the requirements of section 11(2) of The Environment Act (Manitoba).

The CEC identified specific elements of The Environment Act (Manitoba) that should be included in the ministerial agreement:

- publication and a public comment period for the public and other government agencies;
- consideration of the results of proponent-led consultation;
- consideration of climate change impacts;
- an appeal process to the Minister (with reference to Cabinet);
- the authority to request additional information from a proponent;
- the requirement to carry out public consultation;
- the submission of assessments and reports;
- public participation, including the possibility of public hearing;
- the requirement to address environmental issues;
- the appointment of an inter-governmental technical advisory committee to review applications;
- consideration of compliance with The Water Protection Act (Manitoba);
- a process for the alteration of applications and approved forest management plans.

The CEC also identified gaps in the current Guidelines which ought to be addressed in support of the ministerial agreement. Those include:

- a more detailed description of application requirements;
- consideration of local air quality;
- a description of wood storage and processing areas;
- a cumulative effects assessment;
- the consideration of visual impacts;
- the addition of tables to help track impacts and commitments through the life of the forest management plan;

- publication of forest management agreements;
- prior review of guidelines by the technical advisory committee, with a public comment period; and
- certification of forest management plans by a certified professional forester or equivalent.

Finally, the CEC provided some general comments and observations for the forest management planning process to ensure that it is "... robust, comprehensive, transparent and accountable in support of a healthy environment, society and economy." The CEC suggests the development of a "forest management manual" as used in some other jurisdictions. It recommends greater discussion and guidance on consultation with Indigenous communities by proponents. It suggests inclusion of criteria for the selection of indicator species. It recommends the inclusion of the consideration of watershed impacts. It also suggests that proponents be directed to include a description of those activities that will operate to enhance the environment.

The CEC also recognized the impact of forestry certification standards, which often go beyond mere legislative compliance. It noted that certification audits have raised the level of compliance, and that departmental audits may not be required. It did recommend, however, that private certification audits be made available to the departmental director through the life of the forest management plan.

The one-track approval concept derived from the CEC report was put out for "public consultation" on the Government's on-line "Engage MB" platform.

The letter of intent sets out key activities intended to be accomplished by June 30, 2021:

- revising the Guidelines so that they are consistent with the requirements of The Environment Act (Manitoba);
- addressing the CEC's report recommendations regarding the approval process, including greater engagement of Indigenous communities and the public at large; and
- addressing any feedback on the revised Guidelines received through the Engage MB platform.

Those involved in and those potentially affected by the forestry industry in the approval of forest management plans should pay close attention to the Engage MB on-line platform and avail themselves of any opportunities to offer comments. There is no indication that there will be any other form of industry or public engagement or comment process.

John Stefaniuk is a lawyer practising in environmental and natural resource law in the Manitoba-based law firm Thompson Dorfman Sweatman LLP

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