



MANITOBA ECO-NETWORK

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August 25, 2023

Honourable Minister Kevin Klein
Minister of Environment and Climate
mincc@leg.gov.mb.ca

APPEAL OF PROJECT ALTERATION (PUBLIC REGISTRY FILE 5991.00)

CANADIAN PREMIUM SAND INC. – WANIPIGOW SAND PROJECT

The Manitoba Eco-Network is appealing the decision of the Director to designate the changes proposed by Canadian Premium Sand Inc. (CPS) for the Wanipigow Sand Project as “minor” and subsequently approve the proposed alteration. Under section 27 of *The Environment Act*, the Eco-Network is seeking the suspension of the proposed alteration activities and/or Licence No. 3285R until the following conditions have been fulfilled.

We request that the Minister:

- a) Require the Department of Environment and Climate to collect additional information from CPS, including data on new water management ponds and proposed environmental plans. This additional information should be reviewed by the Technical Advisory Committee (TAC) and added to the public registry.
- b) Provide opportunity for meaningful public engagement and independent review of the additional information added to the public registry.
- c) Add more detailed requirements for the construction and operation of the water management ponds, as well as requirements for the monitoring of potential environmental impacts, to Licence No. 3285R.

The grounds for this appeal are:

- 1. The Director’s decision to designate the proposed alterations as “minor”, and subsequent failure to require the proposed alterations to undergo a full environmental assessment under section 11 of *The Environment Act*, was based on insufficient information.**

The Manitoba Eco-Network finds the information on the public record (Registry File No. 5991.00) about the potential impacts of the proposed alterations insufficient. As a result, we challenge the Director’s decision to designate the proposed alteration as “minor” and subsequently approve it. We are particularly concerned about the gaps in information about the addition of new water management ponds (e.g., sediment, settling, freshwater) and proposed environmental plans, including the Surface Water and Groundwater Monitoring Plans.

There is also a lack of transparency in terms of the process that was followed in the review and approval of the alteration. For example, it is unclear if the Technical Advisory Committee (TAC) and federal authorities normally involved in the assessment of proposed

developments played a role in the review of CPS's proposed alteration. There are also no details about any revisions or modifications made, or discussions that occurred between CPS and the Department between the submission of the proposed alteration plan in November 2022 and the approval granted in July 2023.

Of great concern is the lack of information provided by CPS on the proposed water management ponds, including sediment ponds, settling ponds, and freshwater ponds, and associated infrastructure needed (e.g., slurry lines). Although the Notice of Alteration (NOA) indicates that "surface water specific control measures", including the "construction of ponds, ditches, and channels" and "groundwater monitoring" will be developed, and "corrective measures implemented where needed" (NOA, p. 28), there are limited to no technical details about the construction and operation of these measures, and proposed monitoring and follow-up plans.

For example, there are no details provided in the NOA about the following requirements for site water management ponds (see licence clauses 96-99):

- the "containment liner" to be used in the ponds,
- how the "collected contact water, including seepage and runoff from stockpiles" will be directed to the ponds, and
- potential "corrective actions and mitigation plans for any seepage losses."

There is also a lack of information about proposed Environmental Plans (NOA, p. 30), including the:

- Erosion and Sediment Control Plan
- Surface Water Management Plan
- Heritage Resources Management Plan
- Emergency Response Plan
- Dust Management Plan
- Air Quality Monitoring Plan
- Progressive Rehabilitation Plan
- Wildlife Monitoring Plan
- Groundwater Monitoring Plan
- Revegetation Monitoring Plan

More information about the proposed Monitoring Advisory Group should also be collected and published in order to provide transparency about future opportunities for local community members and independent experts to get involved in project monitoring activities.

The Minister should require the collection and review of more information, at a minimum, about the following elements of the project:

- a) Design and structure of new water management ponds (e.g., sediment, settling, freshwater).
- b) Environmental Plans, including Surface Water and Groundwater Monitoring Plans.
- c) The Monitoring Advisory Group.

- d) Future monitoring and follow-up data. Such data collected through CPS’s monitoring plans should be made publicly available and regularly reviewed by the Monitoring Advisory Group.

All collected information should be reviewed by the TAC before any further approvals are granted to CPS and published in the associated public registry file for public review.

2. Changes made to Licence 3285 R could threaten public health and the environment.

The amended licence issued to CPS (3285 R) omits the preamble that was previously included in the Wanipigow licence:

“This section of the License contains requirements intended to provide guidance to the Licensee in implementing practices to ensure that the environment is maintained in such a manner to sustain a high quality of life, including social and economic development, recreation and leisure for present and future Manitobans.”

This omission is troubling as there have been no legal or policy changes that we are aware of that change the purpose of Manitoba’s environmental assessment and licensing process. It is important to emphasize the purpose of Environment Act Licences and the requirements they contain, so we strongly recommended fixing this oversight in Licence 3285 R and restoring the previous preamble that emphasizes protection of the environment and public health.

There is also a need to update Licence 3285 to include more detailed requirements for Site Water Management (c. 96-99). The NOA fails to provide technical details for these requirements (as mentioned in the section above) and has created a gap in the public record for this project. There needs to be additional information collected, and more detailed requirements added to the Licence in order to ensure CPS remains in compliance with clause 98 of the licence which prohibits the “release of effluent” into the environment.

3. The failure of the Minister/Director to meaningfully include the public in the review of the proposed changes.

The proposed amendment was approved without opportunity for meaningful public engagement since the notice and approval were posted in the registry on the same day. The designation of the amendment as “minor” instead of requiring a full assessment under Section 11 of *The Environment Act* also significantly limited the opportunities for meaningful public engagement, including the ability to hold a public hearing.

4. The Wanipigow Project and proposed alteration lacks Free, Prior and Informed Consent from local Indigenous community members.

Community members from Hollow Water First Nation who are part of Camp Morning Star have long expressed concerns with the Wanipigow project. This includes concerns with the proposed alteration of the project and the potential impacts on the treaty rights of local First Nations. In collaboration with the Manitoba Energy Justice Coalition, the members of Camp Morning Star have identified their concerns with the proposed alteration of the

Wanipigow Project and are urging the Minister to revoke the licence of CPS and prevent the development from moving forward. It is clear that CPS does not have the free, prior and informed consent of Indigenous community members who will be impacted by the project. We urge you to meaningfully consider the concerns of Camp Morning Star and the Manitoba Energy Justice Coalition and, at a minimum, suspend Licence No 3285 R until a public hearing can be held to allow independent review of the project and opportunity for Indigenous elders and Knowledge Keepers to share their insights.

Recommendation: Suspend the proposed alteration activities and/or Licence No. 3285 R.

In the view of the Eco-Network, given the significant gaps in publicly available information and potential impact of the proposed project alterations on the environment and Indigenous rights, CPS's proposed amendment should not have been designated by the Director as minor and subsequently approved without a full environmental assessment. At a minimum, the proposed alteration should not have been approved until the potential impacts associated the new water management ponds and the proposed monitoring and follow-up plans have been meaningfully assessed and a public hearing held. The proposed alteration activities and/or Licence No. 3285R should be suspended until information gaps are meaningfully addressed by CPS, new information is thoroughly reviewed by the TAC in a transparency, public way, and meaningful public engagement is undertaken by the Department of Environment and Climate.

Under *The Environment Act*, the Department of Environment and Climate is tasked with protecting the quality of the environment and environmental health of present and future generations and providing the opportunity for all citizens to exercise influence over the quality of their living environment. We are confident you will adhere to these principles and suspend the proposed alteration activities to protect the best interests of Manitobans now and in the future.

Sincerely,

Patricia Fitzpatrick, Ph.D.
Policy Committee Chair

Heather Fast, J.D., LL.M.
Policy Advocacy Director

About the Eco-Network:

Since 1988, Manitoba Eco-Network has promoted positive environmental action by supporting people and groups in our community. The Eco-Network's programming focuses on policy advocacy, engagement in consultation processes and developing capacity building tools that benefit the environmental non-profit sector and our member groups. We are a public interest environmental organization seeking to promote and facilitate good environmental governance and the protection of Manitoba's environment for the benefit of current and future generations.