



**MINISTER OF
CONSERVATION AND CLIMATE**

Legislative Building
Winnipeg, Manitoba, CANADA
R3C 0V8

JUN 08 2020

Serge Scrafield
Chair
Clean Environment Commission
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Dear Serge Scrafield:

This replaces my letter of March 19, 2020 regarding a request for the Clean Environment Commission to conduct an in-depth review to identify policy options to implement a coordinated polluter pays approach (policy, program, and legislative regime) across both the Orphaned and Abandoned Mine Sites (OAM) and Contaminated Sites Environmental Remediation Programs. The Terms of Reference enclosed has been revised to provide an extension to the report submission schedule due to the COVID-19 pandemic.

In October 2019, the Clean Environment Commission completed a review of the regulation and management of contaminated mine sites in three other Canadian provinces: Ontario, Saskatchewan and British Columbia, and a final report of their findings was submitted and reviewed by staff. The research was conducted pursuant to section 6(3) of The Environment Act to provide Manitoba with a synopsis of legal provisions and management approaches by those other jurisdictions.

Pursuant to Section 6(a) of The Environment Act, I have requested the Clean Environment Commission to conduct an in-depth review to support the development of a policy options paper and recommendations on a polluters pay approach to environmental liabilities for Manitoba. The focus will be on sites under both the OAM Program and the Contaminated Sites Environmental Liabilities Program. Enclosed is the revised Terms of Reference specifying the scope of the policy options paper for submission by September 30, 2020 with an interim report due on July 31, 2020.

Warm regards,

A handwritten signature in black ink, appearing to read 'Sarah'.

Sarah Guillemard
Minister

**Terms of Reference
Clean Environment Commission
Polluters Pay Policy Options Paper**

Background

The Orphaned and Abandoned Mine Site Rehabilitation (OAM) Program holds significant environmental and financial liability for the Government of Manitoba. While progress has been made since the program's creation in 2001/02, considerable work is required to reduce Manitoba's liabilities and ensure appropriate cost containment and management for all projects.

Decommissioning of mines falls under the authority of *The Mines and Minerals Act* and Regulations. The Act was amended in 1993 to ensure mine proponents maintained responsibility for sites through site closure plans to avoid financial liability for the Province. Prior to this amendment, Manitoba assumed responsibility for the remediation of sites that posed a risk to health and the environment, and for which there was no financially-viable or responsible party.

To advance Manitoba's 100 day action item to review the OAM portfolio to ensure a more rapid pace of remediation efforts and hold polluters accountable, the department is requesting that the Clean Environment Commission develop options and recommendations on how Manitoba can hold polluters accountable while balancing economic growth within the province.

In addition, the Contaminated Sites Environmental Remediation Program also holds a number of financial liabilities for contaminated sites across Manitoba. While the program does take steps to hold the polluter accountable, a review is required to determine if enhancements can be made to increase success.

Focus

The focus of the policy paper is to identify options to implement a coordinated polluter pays approach (policy, program, and legislative regime) across both the OAM and Contaminated Sites Environmental Remediation Programs. This approach must take a whole of government approach into consideration to ensure a balanced approach when it comes to protecting the environment while still facilitating economic growth. Options are to include implementation/procedural steps for a polluter pays approach to remediate orphaned and abandoned mines, including other contaminated sites. The approach proposed by the department in the future will take into account best practices across Canada.

Terms of Reference

Pursuant to Section 6(a) of *The Environment Act*, the Minister has determined the following Terms of Reference for the Commission to carry out this project:

- Review and propose amendments and/or consolidation of the current legislation governing contaminated sites to ensure there is consistency across government in how these sites are assessed from a risk perspective.
- Identify options for the development of an appropriate risk-based approach towards the identification, classification and management of all contaminated sites in Manitoba, including but not limited to, abandoned mines, abandoned oil and gas wells, quarries, and any other industrial activity that resulted in contamination.

- Uphold the general concept of 'polluter pays' and the appropriate apportionment of responsibility amongst responsible parties; but explore added flexibility to allow for joint and/or several liability when certain criteria are met.
- Reduce the liability of Manitoba associated with abandoned mine sites and other contaminated sites by providing recommendations for an updated funding structure to defray costs on behalf of Manitobans. This may include exploring options to replace the existing Environmental Remediation Fund or other similar funds (e.g. Abandonment and Reclamation Fund under *The Oil and Gas Act*), with a more flexible and longer-term fund that would draw from a variety of sources (e.g. administrative penalties, application fees, securities, and/or grants).

CEC Activities

To complete the work outlined above, the Commission will undertake the following activities:

- Complete further research and analysis of regulatory regimes that apply a polluters pay approach to contaminated sites in other jurisdictions, including consultation with other jurisdictions to better understand best practices, and adaptability in Manitoba.
- Seek input from department staff across government, industry representatives (e.g. engineers, service professionals, technicians, and legal experts) regarding regulations, regulatory processes, and best practices for remediating contaminated sites.
- Provide insight gained by the Commission through its involvement in the existing contaminated site process.

Deliverables

Upon completion of the review, Clean Environment Commission staff will provide the Minister with the results of the review, along with options and recommendations for regulatory and procedural improvements. The Commission is asked to submit an interim report by **July 31, 2020** addressing any matters which could require legislative amendments. The final policy options paper is due **September 30, 2020**.

The Commission may, at any time, request that the Minister of Conservation and Climate review or clarify these Terms of Reference.

May 11, 2020