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# Manitoba Clean Environment Commission

Annual Report  
2021-2022



**Manitoba Clean Environment Commission**

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# **Manitoba Clean Environment Commission**

**Annual Report 2021-2022**





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**MINISTER OF**

The Honourable Janice Filmon, C.M., O.M  
Lieutenant Governor of Manitoba  
Room 235 Legislative Building  
Winnipeg, MB R3C 0V8

Your Honour:

It is my privilege to present you with the Annual Report of the Clean Environment Commission detailing its activities for the fiscal year ending March 31, 2022.

Warm Regards,

*Original signed by*

Jeff Wharton  
Minister





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Office of the Chairperson  
Clean Environment Commission

The Honourable Jeff Wharton  
Minister of Environment, Climate and Parks  
Room 344 Legislative Building  
Winnipeg, Manitoba  
R3C 0V8

Dear Minister:

Pursuant to the provisions of Section 6(10) of *The Environment Act*, I am pleased to submit to you, the Commission's annual report for the year ending March 31, 2022.

Submitted on behalf of the Commission.

*Original signed by*

Jonathan Scarth  
Chair



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# The Manitoba Clean Environment Commission

The ministers responsible for The Environment Act during the 2021-2022 fiscal year were the Honourable Sarah Guillemard and the Honourable Jeff Wharton. Commission membership consisted of a full-time chairperson and citizen appointees, namely:

Jonathan Scarth, Chairperson  
(Appointed January, 2022)

Glen Cummings

John (Jay) Doering

Ian Gillies

Terry Johnson

Betty Leitch

Tim Sopuck

Laurie Streich

Vincent Tacan

Serge Scrafield, Chairperson until December 2021. Appointed a commissioner in January, 2022.

## **Mandate**

The Clean Environment Commission is established under The Environment Act to provide advice and recommendations to the minister, to develop and maintain public participation in environmental matters and to carry out functions that it is required or permitted to carry out under The Contaminated Sites Remediation Act and The Drinking Water Safety Act.

Commission membership includes a full-time chairperson and part-time commissioners appointed by Order-in-Council. Commissioners come from a wide variety of backgrounds and disciplines as well as different regions of the province.

When requested by the minister, the commission must do one or more of the following in accordance with any terms of reference specified by the minister:

- (a) provide advice and recommendations to the minister;
- (b) conduct public meetings or hearings and provide advice and recommendations to the minister;
- (c) conduct investigations into specific environmental concerns and report back to the minister;
- (d) act as a mediator between two or more parties to an environmental dispute and report back to the minister.

The commission may on its own volition conduct an investigation into any environmental matter, except a matter involving the gathering of evidence to determine whether or not a specific proponent is complying with the provisions of this Act and the regulations, and advise and make recommendations thereon to the minister.

## Mandat

La Commission de protection de l'environnement est établie en vertu de la Loi sur l'environnement afin de fournir des conseils et de faire des recommandations au ministre, de favoriser et de maintenir la participation du public à l'égard des questions liées à l'environnement et de s'acquitter des fonctions qu'elle peut ou doit exercer en vertu de la Loi sur l'assainissement des lieux contaminés et de la Loi sur la qualité de l'eau potable.

La Commission est composée d'un président à plein temps et de commissaires à temps partiel nommés par décret. Les commissaires représentent des disciplines et des horizons différents et viennent aussi de différentes régions de la province.

À la demande du ministre et selon le mandat qu'il précise, la Commission prend l'une ou plusieurs des mesures suivantes :

- (a) lui fournit des conseils et des recommandations;
- (b) tient des réunions ou des audiences publiques et fournit des conseils et des recommandations au ministre;
- (c) procède à des enquêtes à l'égard de questions précises portant sur l'environnement et en fait rapport au ministre;
- (d) agit à titre de médiateur entre plusieurs parties à un différend portant sur l'environnement et rend compte de sa médiation au ministre.

La Commission peut de sa propre initiative procéder à une enquête en matière d'environnement, sauf à l'égard d'une question portant sur la récolte des éléments de preuve en vue de déterminer si un promoteur particulier se conforme ou non aux dispositions de la présente loi ou des règlements, et fournir des conseils et des recommandations au ministre à cet égard.

## **Message from the Chair**

The Clean Environment Commission takes very seriously the important role in environmental protection given it by The Environment Act of Manitoba. The commission seeks to fulfill this mandate, in part, by offering advice that we believe contributes to ensuring that developments are environmentally sustainable and to improving the practice of environmental assessment in Manitoba.

During the 2021-2022 fiscal year, the commission was pleased to see the provincial government adopt the recommendations provided in its 2020 report: Forest Management Plan Approval Process. Pursuant to an agreement between the ministers responsible for The Environment Act and The Forest Act, the review and approval of forest management plans will now be conducted through a single integrated process that meets the requirements of both statutes.

On March 19, 2020, the commission received a request and terms of reference from the minister to conduct a review and prepare a policy options paper on a polluter pays approach to environmental liabilities related to contaminated sites in Manitoba. The commission panel conducted a review of contaminated sites legislation and practices in Manitoba and in all other Canadian jurisdictions. The panel also held meetings with representatives of industry, the legal profession and municipalities. The commission submitted its report entitled Review of Legislation and Programs for Sites Impacted by Development, which was released in June of 2021. Following this, the commission met with the Manitoba Environmental Industries Association and department staff to answer their questions regarding the report and recommendations. A summary of the recommendations is provided in this annual report.

The commission has been designated as the appeal body for certain matters under The Contaminated Sites Remediation Act. One appeal was received during the 2019-2020 year and was adjudicated in a decision released on January 22, 2022. Leave for appeal of the commission's decision to the Manitoba Court of Appeal is being pursued by one of the parties; a decision on that application was pending as of March 31st, 2022.

On November 15, 2021, the commission was asked by the minister to conduct a public hearing regarding the proposed Vivian Sand Extraction Project. On February 3, 2022 the commission was advised that the departmental review was complete and that the commission's review could proceed. As of March 31, 2022, a panel had been appointed and was engaged in retaining technical experts to assist in the conduct of a technical review as requested in the terms of reference provided by the minister.

During 2021-2022 substantial staff time was provided to assist with the public's inquiries regarding the response to COVID-19.

I would like to thank my fellow commissioners and the staff for their contributions throughout the year, and in particular recognize the leadership contributions of my predecessor Serge Scrafield during his five-year term as Chair.

***Jonathan Scarth***

## **Message du président**

La Commission de protection de l'environnement prend très au sérieux le rôle important de protection de l'environnement que lui confère la Loi sur l'environnement du Manitoba. La Commission s'efforce de remplir son mandat en partie en continuant à offrir des conseils qui, selon elle, contribuent à garantir que les projets d'aménagement sont durables sur le plan environnemental, et à améliorer la pratique de l'évaluation environnementale au Manitoba.

Au cours de l'exercice financier 2021-2022, la Commission était heureuse de voir le gouvernement provincial adopter les recommandations formulées dans son rapport de 2020 : Processus d'approbation des plans de gestion forestière. Conformément à un accord conclu entre les ministres responsables de la Loi sur l'environnement et de la Loi sur les forêts, l'examen et l'approbation des plans de gestion forestière seront dorénavant réalisés dans le cadre d'un seul processus intégré qui répond aux exigences des deux lois.

Le 19 mars 2020, la Commission a reçu une demande et un mandat du ministre pour examiner et préparer un document d'options politiques sur une approche de « pollueur-payeur » en matière de responsabilité environnementale liée aux sites contaminés de la province. Les membres de la Commission ont réalisé un examen des dispositions législatives et des pratiques en matière de sites contaminés au Manitoba et partout ailleurs dans le Canada. Ils ont aussi organisé des rencontres avec des représentants de l'industrie, des professions juridiques et des municipalités. La Commission a présenté son rapport intitulé *Review of Legislation and Programs for Sites Impacted by Development*, qui a été publié en juin 2021. Par la suite, la Commission a rencontré la Manitoba Environmental Industries Association et le personnel du ministère pour répondre à leurs questions sur le rapport et les recommandations. Un résumé des recommandations est fourni dans le rapport annuel.

La Commission a été désignée comme organisme d'appel pour certaines affaires en vertu de la Loi sur l'assainissement des lieux contaminés. Un appel a été reçu pendant l'exercice 2019-2020 et a fait l'objet d'une décision publiée le 22 janvier 2022. L'une des

parties a demandé une autorisation d'interjeter appel de la décision de la Commission à la Cour d'appel du Manitoba; une décision à ce sujet était en attente en date du 31 mars 2022.

Le 15 novembre 2021, le ministre a demandé à la Commission de tenir une audience publique sur la proposition du projet d'extraction de sable de Vivian. Le 3 février 2022, la Commission a été avisée que l'examen du ministère était terminé et qu'elle pouvait entamer son processus d'examen. En date du 31 mars 2022, un comité avait été nommé et procédait à la rétention des services d'experts techniques pour assister à la réalisation d'un examen technique, comme cela est exigé dans le mandat fourni par le ministre.

En 2021-2022, le personnel a consacré beaucoup de temps pour aider avec les demandes de renseignements du public concernant la riposte à la COVID-19.

J'aimerais remercier mes collègues commissaires et les membres du personnel pour leurs contributions tout au long de l'année, et j'aimerais particulièrement reconnaître les contributions de leadership de mon prédécesseur, Serge Scrafield, pendant son mandat de présidence de cinq ans.

***Jonathan Scarth***

## Hearings

### Vivian Sand Extraction Project

On November 15, 2021, the Minister of Conservation and Climate (now Environment, Climate and Parks) requested the Clean Environment Commission conduct a technical review and public hearing to consider the potential environmental effects of the proposed CanWhite Sands (now Sio Silica) silica sand extraction project. The request included the following terms of reference:

- 1. The CEC will conduct a technical review of the Environment Act proposal and the hydrogeology and geochemistry assessment report and provide advice and recommendations to the Minister regarding potential environmental and health effects of the proposed sequential installation, operation and decommissioning of silica sand extraction wells for the silica sand extraction project.*
- 2. In providing advice and recommendations, the CEC will provide members of the public the opportunity for input regarding the CanWhite Sands silica sand extraction project proposal at a public hearing in a location consistent with the affected community.*

*The CEC review process should begin as soon as possible and be completed by March 15, 2022.*

Preparations have begun, and an extension in time was sought and approved. Results of the technical review and hearing will be provided in a future annual report.

### Contaminated Sites Remediation Act

Over the course of 2021-2022, no new appeals were received. The commission rendered a decision on an outstanding appeal of a director's decision regarding the designation of a Potentially Responsible Person. Leave for appeal of the commission's decision to the Manitoba Court of Appeal is being pursued by one of the parties, but a decision on that application was pending as of March 31, 2022.

## Investigations

### Review of Legislation and Program for Sites Impacted by Development

On March 19, 2020 and later clarified on June 8, 2020 the Minister of Conservation and Climate (now Environment, Climate and Parks) made the following request of the Clean Environment Commission:

*Pursuant to Section 6(a) of The Environment Act, I hereby request that the Clean Environment Commission 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 Orphaned and Abandoned Mine Site Rehabilitation Program and the Contaminated Sites Environmental Liabilities Program.*

The minister provided the following terms of reference for the commission to carry out the 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).*

A four-person review panel was appointed and included Serge Scrafield (Chair), Glen Cummings, Terry Johnson and Laurie Streich. A final report was provided to the minister in December 2020.

The panel reviewed contaminated sites legislation and programs in other Canadian provinces and mining and oil and gas rehabilitation programs in selected locations. They also received comments from practitioners, industry and municipal representatives and sought clarification on current practices from Manitoba government staff. A summary of the commission's recommendations are found below.

### Contaminated Sites

The commission provided 13 recommendations respecting contaminated sites that address:

- certification of site professionals, obliging them to report contamination and a requirement for owners and occupiers to use these professionals in the remediation process
- responsibilities of the owner or occupier to remediate
- a process for classification of sites and that remediation actions be commensurate with the level of risk
- the role of the director and a requirement to develop codes of practice, protocols and guides
- options for the owner or occupier to recover costs from responsible parties
- the role of the Clean Environment Commission

In addition, the commission recommended that the "polluter pays" principle be retained in legislation as one of the factors to be considered in assigning responsibility for costs.

### Mines

The commission offered four recommendations related to the review of mine rehabilitation plans and calculation of assurances as well as policy and procedures for long-term maintenance of closed mine sites. Five policy options address financial support for orphaned and abandoned mine sites.

### Aggregate Quarries

The commission provided six recommendations that address requirements for rehabilitation plans and financial assurances for leased sites on Crown land and large sites on private land as well as the option of continuing the levy for permitted sites on Crown land and small sites on private land.

### Oil and Gas

The commission recommended that the performance deposit and the levy be increased to assure that funds are available for rehabilitation and reclamation of oil and gas developments.

## Other Activities

### **Professional Development and Training**

Commission members and staff attended virtual workshops and conferences that provided professional development in the area of tribunals and hearings, environmental assessments and current environmental and Indigenous related topics and issues. Examples of the workshops and conferences included, 9<sup>th</sup> Annual National Symposium on Cumulative Effects Assessment and Environmental Management sponsored by The Canadian Institute, Ontario Association of Impact Assessment (OAIA) annual meeting, International Association of Impact Assessment (IAIA), webinar series "Think Big: A Cleaner, Greener COVID-19 Recovery", Environment Climate Change Canada Lake Winnipeg Basin Program Virtual Symposium 2022 including an Indigenous Engagement webinar, Manitoba Water Strategy webinars, World Water Day webinars on several topics. Contributed as a panel member on the Manitoba Environmental Industries Association (MEIA) session regarding the results of the impacts of development report, focusing on contaminated sites. Also viewed were webinars and presentations sponsored by the Canadian Water Resources Association, and Global Water Futures on water related issues. The commission chair serves as a director on the board on the Manitoba Council of Administrative Tribunals.

## **Manitoba Clean Environment Commission Publications**

*Copies of all commission reports are available from the commission office upon request and are also available on the website [www.cecmanitoba.ca](http://www.cecmanitoba.ca).*

Preliminary Report on Contamination of Underground Water Sources by Refined Petroleum Products (1975)

Report on the Investigation of the Pollution of Underground Water by Refined Petroleum Products (1975)

Report on the Investigation of Smoke Problems Encountered in Southern Manitoba in 1976 (1977)

Report on an Investigation of Intensive Livestock Production Operations in Manitoba (1979)

Report on a Proposal Concerning Surface Water Quality Objectives and Stream Classification for the Province of Manitoba (1979)

Report on a Proposal for the Classification of Manitoba's Surface Water Souris River Principal Watershed Division (1980)

Report on Red River Waters (Proposed Classification of Surface Water Quality In Manitoba's Red River Principal Watershed Division and Certain Red River Tributaries) (1980)

Report on Proposed Classification of Surface Water Quality in Manitoba's Grass-Burntwood Rivers Principal Watershed Division (1981)

Report on a Proposal for the Classification of Manitoba's Surface Water Red River Principal Watershed Division (1981)

Report on a Proposal for the Classification of Manitoba's Surface Water Grass-Burntwood Rivers Principal Watershed Division (1982)

Report on Mosquito Control Programs in Manitoba (1982)

Report on Environmental Land Use Conflict - Balmoral, Manitoba (1983)

Report on Hazardous and Special Wastes Stage 1 of Phase 1 of Program (1983 & 1984)

Report on the Review of the Plan for the Rehabilitation of the Site of the Domtar Inc. Former Wood Preserving Plant, Transcona, Manitoba (1984)

Report on Manitoba Hazardous Waste Management Program (Volume 1) (1987)

Report on Manitoba Hazardous Waste Management Program (Volume 2) (1987)

Report on the Draft Regulation Respecting Atmospheric Emissions of Sulphur Dioxide and Particulates From Inco Limited in Thompson and HBM & S Co. Limited in Flin Flon (1987)

Report on Investigation of Smoke Problems from Agricultural Crop Residue and Peatland Burning (1987)

Report on Netley Creek Golf Course Development Proposal (1988)

Report on Burns Rendering Plant, Brandon, Review of the Environment Department Licence Regulating the Operation of and Emissions from the Plant (1988)

Report on Village of Shoal Lake Sewage Lagoon Proposal (1988)

Report on Puffy Lake Gold Mine (1988)

Report on Bonne Homme Colony Farms, Rural Municipality of Westbourne (1988)

Report on Upland Colony Farms Sewage Lagoon System (1988)

Report on Precise-To-Form Castings Inc. Investment Casting Foundry Operation (1988)

Report on McCain Foods Limited, Portage la Prairie (1988)

Preliminary Report on a Proposal by Canamax Resources Inc. for the Development of a Potash Mine at Russell, Manitoba (1988)

Final Report on a Proposal by Canamax Resources Inc. for the Development of a Potash Mine at Russell, Manitoba (1989)

Report on Clearwater Lake Watershed Basin Surface Water Quality Classification (1989)

Report on Shell Prairie Inn and Gas Station Wastewater Treatment and Disposal System (1989)

Report on Westlake Regional Water Supply Proposal (1989)

Report on City of Portage la Prairie Sewage Sludge Disposal Project (1989)

Report on North Duck River Headwater Storage Project (1989)

Report on Town of Beausejour Sewage Lagoon Expansion (1989)

Report on COJEF Limited Burning Site (1989)

Report on Deago Properties Sewage Treatment Plant (1989)

Report on Rural Municipality of Rhineland/Town of Altona Liquid Waste Holding Ponds for C.S.P. Foods Ltd. (1989)

Report on Namew Lake Mine/Mill (1989)

Report on Provincial Road #340 Class 2 Highway Relocation Project (1989)

Report on Repap Manitoba Inc. Phase I Modification and Expansion of the Manfor Complex (1989)

Report on Norquay Holding Company Sewage Lagoon (1989)

Report on Airport Holding Co. Ltd. Domestic Wastewater Treatment Lagoon (1990)

Report on Rural Municipality of Portage la Prairie Liquid Waste Disposal Facility (1990)

Report on Highway Gardens Ltd. Variation to Licence #391 (1990)

Report on Whiteshell Colony Farms Ltd. Domestic Waste-water Treatment Lagoon (1990)

Report on Pelican Lake Enhancement Project (1990)

Report on Village of St. Claude Sewage Lagoon and Discharge Route (1990)

Report on Ducks Unlimited Canada Oak Hammock Marsh Conservation Centre/Office Proposal (1990)

Report on Meadow Materials (Dow Corning Silicon Energy Systems, Inc.) Pilot Plant (1990)

Report on Beausejour Auto Wrecking Continuing Operation (1991)

Report on Hudson Bay Mining & Smelting Co. Ltd. Namew Lake Mine/Mill - A Review (1991)

Report on Abitibi-Price Inc. FML #01 Forest Resource Management Plan 1991 - 1998 (1992)

Report on Application of Water Quality Objectives for the Watershed Classification of the Red and Assiniboine Rivers and Tributaries Within and Downstream of the City of Winnipeg (1992)

Report on General Scrap & Car Shredder Ltd. Review of Environment Act Licence 898VC (1992)

Report on Manitoba Hazardous Waste Management Corporation Central Hazardous Waste Management Facility Licence Application (1992)

Rapport Sur Les Audiences Publiques: Demande De Permis Relative À Un Centre de Gestion Des Déchets Dangereux Présentée Par La Corporation Manitoibaine De Gestion Des Déchets Dangereux (1992)

Report on Good Hope Holding Company Ltd. Wastewater Treatment Lagoon, Rural Municipality of Portage la Prairie (1992)

Report on the Rural Municipality of Rhineland and The Town of Altona Regarding Ongoing Disposal Practices for Soap-stock and Bleaching Clay Generated by CanAmera Foods Ltd. (1992)

Report on Public Hearings: City of Winnipeg - Deacon Reservoir Expansion, Rural Municipality of Springfield (1993)

Report on Public Hearings: Village of Teulon - Wastewater Stabilization Pond and Pipeline, Rural Municipality of Rockwood (1994)

Report on Public Hearings: Pembina Valley Water Cooperative Inc. Regional Water Supply Proposal (1994)

Report on Public Hearings: Louisiana-Pacific Corporation Oriented Strand Board Plant, Rural Municipality of Minitonas (1994)

Report on Public Hearings: Asessippi Ski Hil Project, Rural Municipality of Shellmouth (1995)

Report on Public Hearings: Solid Waste Management - Capital Region (1995)

Rapport Sur Les Audiences Publiques: Concernant La Gestion Des Déchets Solides Dans La Région De La Capitale (1995)

Report on Public Hearings: Browning Ferris Industries (BFI) Waste Systems Inc. Integrated Waste Management Facility, Rural Municipality of Rosser (1995)

Report on Public Hearings: Louisiana-Pacific Canada Ltd. Ten Year Forest Management Plan 1996-2005 (1996)

Report on Public Hearings: Tolko Manitoba Inc. - Forest Management Plan 1997-2009 (1997)

Report on Public Hearings: Town of Carman Abatement Project – Linear Grain Inc. – Anhydrous Ammonia Storage Tank Relocation (1999)

Manitoba and Climate Change: A Primer (2001)

Workshop Report: Review of Electric and Magnetic Fields (EMFs) (2001)

Report on Public Hearings: Simplot Canada Ltd. Potato Processing Plant, Portage la Prairie/City of Portage la Prairie Water Pollution Control Facility (2002)

Report to the Government of Manitoba on Public Meetings: Flood Protection Options for the City of Winnipeg (2002)

Rapport au gouvernement du Manitoba sur les audiences publiques relatives aux solutions en matière de protection contre les inondations pour la ville de Winnipeg (2002)

Report to the Minister of Conservation on Public Meetings: Draft Environmental Impact Statement Guidelines for the Wuskwatim Generation and Transmission Projects (2002)

Interim Report on Public Hearings: City of Winnipeg Wastewater Collection and Treatment Systems – “Sewage Spill” (2003)

Better Treatment – “Taking Action to Improve Water Quality”. Report on Public Hearing: City of Winnipeg Wastewater Collection and Treatment System (2003)

Report on Public Hearings: City of Brandon Industrial Wastewater Treatment Facility Expansion and Maple Leaf Foods Inc. Hog Processing Plant Alteration (2003)

Report on Public Hearings: Rural Municipality of Brokenhead (Garson, Tyndall, and Henryville) Water/Sewer Infrastructure Project (2003)

Report on Public Hearings: Wuskwatim Generation and Transmission Projects (2004)

Summary of Public Hearing: Wuskwatim Generation and Transmission Projects (2004) (also available in Cree)

Report on Public Hearing: Red River Floodway Expansion (2005)

Report on Public Hearing: Pembina Valley Water Cooperative, Supplemental Groundwater Supply System (2007)

Environmental Sustainability and Hog Production in Manitoba (2007)

An investigation into nutrient reduction and ammonia treatment at the City of Winnipeg’s wastewater treatment facilities (2009)

An investigation into changes requested to Louisiana-Pacific Environment Act Licence (2010)

Supplement to an investigation into nutrient reduction and ammonia treatment at the City of Winnipeg's wastewater treatment facilities (2011)

Report on Public Hearing: Bipole III Transmission Project (2013)

Report on Public Hearing: Keeyask Generation Project (2014)

Lake Winnipeg Regulation (2015)

Report on Public Hearing: Manitoba-Minnesota Transmission Project (2017)

A Review of the Regional Cumulative Effects Assessment for hydroelectric development on the Nelson, Burntwood, and Churchill River Systems. (2018)

Forest Management Plan Approval Process. (2020)

Review of Legislation and Programs for Sites Impacted by Development. (2020)

