



Manitoba Eco-Network
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Our Line in the Sand
Box 203,
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July 19, 2023

The Honourable Kevin Klein
Minister of Environment and Climate
344 Legislative Building
450 Broadway
Winnipeg, MB R3C 0V8

SENT VIA EMAIL:
minec@manitoba.ca
dmec@manitoba.ca

Dear Minister Klein:

Re: Vivian Sand Extraction Project and Report of the Clean Environment Commission

We write as concerned citizens, affected area residents and engaged stakeholder organizations to urge you to reject the licence application for the proposed Vivian Sand Extraction Project.

Our water is too precious, the technology is too unproven and the environmental assessment is far too deficient¹ for an extraction licence to be granted.

Our concerns about this project and the related Silica Sand Processing Facility² pre-date Sio Silica's *Environment Act* licence applications. We advocated for your predecessor to refer the matter to the Clean Environment Commission ("CEC"). We described the Sio Silica environmental assessment as a poster child for flawed environmental assessment. We red-flagged the notable absence of Mines Branch input into the commentary of the Technical Advisory Committee ("TAC").

The June 2023 CEC report, which followed lengthy public hearings, underscores our concerns. The CEC unanimously concluded that:

members of the panel are unable to state with confidence that all potential environmental effects of this project have been fully considered and that adequate detailed plans have been prepared for preventing or mitigating these effects.³

¹ The deficiencies in the environmental assessment are noted throughout the Clean Environment Commission's report. For example, see Clean Environment Commission Report on the Vivian Sand Extraction Project (2023), p 38-40, 44, 54-56, 64, 76. ("CEC Silica Sand Report")

² Environment Act Licence No. 3367

³ CEC Silica Sand Report, p xi-xiv.

The “next steps” for Sio Silica’s licence application are in your hands and those of your Department. Consistent with your commitment to take the CEC’s report “very seriously”,⁴ we urge you to:

Categorically reject the Sio Silica licensing proposal on the grounds that the proponent has failed to demonstrate the potential environmental effects of the project are fully understood or will be sufficiently addressed and mitigated.

In the event you receive a new application for the project, we ask you to make it clear to the proponent and to your Department that any new application by the proponent must:

- make provision for public input at all stages of the process;
 - address the myriad concerns identified by the CEC regarding the novelty of the extraction and water treatment processes;⁵
 - include a cumulative effects assessment for the full 24-year life of the project considering its impact in light of other existing and foreseeable projects in the area;⁶
 - be subject to meaningful commentary by a TAC, including the Mines Branch;⁷ and,
 - be considered in a new CEC hearing with meaningful participant funding support.⁸
- Consideration should be given to designating a new application for the project under Class 3 of the *The Environment Act*, which would necessitate a public hearing.⁹

Additionally, it was made apparent in the public hearings and recognized by the CEC that there is a need for better and updated information regarding groundwater protection and aquifer sustainability before any major project of this nature can be considered for licensing in the southeast region of Manitoba, including:

- addressing the lack of coordination of groundwater planning, which made it hard to consider the full effect of projects;¹⁰
- uncertainties regarding the status of the Southeast Regional Groundwater Plan and its applicability to this project,¹¹ including the need for updated assessment of the state of the aquifer;¹² and

⁴ Winnipeg Sun, “No Timeline for silica project after Manitoba received environmental report”, June 23, 2023, online: <https://winnipeg.sun.com/news/provincial/no-timeline-for-silica-project-after-manitoba-received-environmental-report>.

⁵ See for example, CEC Silica Sand Report, p 54-56.

⁶ CEC Silica Sand Report, p 85, Recommendation 8.

⁷ See commentary from the CEC in CEC Silica Sand Report, p 38-39 regarding the absence of comments from the Mines Branch during the TAC process and the need for the project to meet the requirements under *The Mines and Minerals Act*.

⁸ See comments regarding challenges with the lack of participant funding, CEC Silica Sand Report, p 79.

⁹ *The Environment Act*, CCSM c E125, s 12.

¹⁰ CEC Silica Sand Report, p 31.

¹¹ CEC Silica Sand Report, p 31.

¹² CEC Silica Sand Report, p 44, 80.

- the need for a groundwater model that addresses proper spatial boundaries, low and high recharge rates and considers experienced and predicted climate effects.¹³

The “Initial Water Strategy Action Plan”, released in June 2023, could represent a starting point to gathering this necessary information, especially with protecting the quality and quantity of groundwater being recognized as an objective.¹⁴

Licensing Process and the CEC’s Recommended “Step-wise Approach”

Any assessment process that fails to consider the effects of all stages of a project cumulatively and in combination with impacts of other parallel activities is inconsistent with the spirit and intent of *The Environment Act*.

Based upon the guidance of the Manitoba Law Reform Commission and our own experience, we recommend against the project proceeding by a staged *Environment Act* licensing process or in the “Step-wise Approach” considered by the CEC.¹⁵ Doing so would be likely to impair detailed scrutiny and public review. It would engender further controversy and undermine, rather than restore, public confidence.

Using the “staged licencing” provision at section 13 of *The Environment Act* to permit the project to proceed in stages or steps would not be appropriate. The Manitoba Law Reform Commission has recommended that section 13 be repealed because of the way it can “prevent a comprehensive consideration of a development’s aggregate effects.”¹⁶ We share these concerns and urge against reliance on this provision.

It also would be unacceptable for the necessary “stages” to be directed as conditions attached to approval of the licence. The CEC makes it clear that there are significant deficiencies in the body of evidence characterizing the risks of the project. It would be unacceptable for this evidence to be developed with the licencing of the project already a foregone conclusion, irrespective of potential subsequent findings. Such an approach could likely compel a judicial review and judicial intervention.

Legal Protections for Aquifers

Water protection in the project area was a significant issue during the CEC public hearings.¹⁷ Recognizing this, the CEC’s first recommendation calls on the government to seek a legal opinion confirming the application of express legal protections which prohibit creating connections between the two aquifers affected by the proposed project.

¹³ CEC Silica Sand Report, p 31-32, 80.

¹⁴ Initial Water Strategy Action Plan, June 2023, p 26, online: https://www.gov.mb.ca/sd/pubs/water/water_action_plan2023.pdf.

¹⁵ CEC Silica Sand Report, p 83-84, Recommendation 2.

¹⁶ Manitoba Law Reform Commission, “Manitoba’s Environmental Assessment and Licensing Regime under *The Environment Act*”, (2015) at 103, Recommendation 15.1.

¹⁷ See for example, CEC Silica Sand Report, p xii.

As we argued before the CEC, the statutory framework for environmental protection in Manitoba consists of multiple inter-related statutes which, read together, emphasize maintaining the integrity and separation of aquifers to ensure that they are appropriately managed and preserved.¹⁸

Independent evidence presented to the CEC confirmed that the proposed project will create interconnections between the two affected aquifers, due to the collapse of the shale aquitard and fractured limestone (Carbonate Aquifer), which “essentially removes the ability to manage the carbonate and sandstone aquifers separately downstream of the region of interconnection.”¹⁹

Full understanding of and respect for legal protections for aquifers is crucial prior to any further consideration of this project. Consistent with CEC Recommendation 1, we ask that Manitoba:

seek a legal opinion with respect to sections 2(e) and 3(1) of the Well Standards Regulation under *The Groundwater and Water Well Act* and section 6(1) of the Drilling Regulation under *The Mines and Minerals Act*, regarding the interconnection between the Winnipeg Formation and any overlying aquifer, including aquifers within the Stonewall, Stony Mountain or Red River Formations.²⁰

Conclusion

A fundamentally flawed environmental assessment cannot be papered over after the fact. The risks associated with the Vivian Sand Extraction Project are not fully understood and, as such, they cannot be appropriately mitigated based upon what we know today. Given the environmental importance of this region to the public and the significance of the potential risks, this project must be rejected.

Sincerely,

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¹⁸ See the written legal brief of the Manitoba Eco-Network and Our Line in the Sand filed with the CEC as Exhibit H-053 and available online.

¹⁹ CEC Silica Sand Report, p 52.

²⁰ CEC Silica Sand Report, p 83.