



MANITOBA ECO-NETWORK

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Honourable Minister Kevin Klein
Minister of Environment and Climate
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Environment and Climate Public Registry
publicregistry@gov.mb.ca

APPEAL OF ENVIRONMENT ACT LICENCE NO. 3401 (PUBLIC REGISTRY FILE 6137.00)

CANADIAN PREMIUM SAND INC., SELKIRK SOLAR GLASS MANUFACTURING FACILITY

The Manitoba Eco-Network is appealing the decision of the Director to issue Environment Act Licence No. 3401 to Canadian Premium Sand Inc. (CPS) for their proposed Selkirk Solar Glass Manufacturing Facility. Under section 27 of *The Environment Act*, the Eco-Network is seeking the suspension of Licence No. 3401 until the following conditions have been fulfilled.

We request that the Minister:

- a) Require the collection of additional information, including an updated Traffic Impact Study, about the potential impacts of the development on local infrastructure by the Department of Environment and Climate. This additional information should be reviewed by the Technical Advisory Committee (TAC) and added to the public registry.
- b) Provide opportunity for public engagement on the additional information added to the public registry.
- c) Add requirements for monitoring of potential impacts to local infrastructure to Licence No. 3401.

The grounds for this appeal are:

- 1. The failure of the Department and Director to address potential impacts identified by the TAC and public.** The environmental assessment process requires the identification of potential impacts on human health and safety and the incorporation of environmental and risk management practices to prevent or mitigate adverse implications and ensure the protection of environment and human health. Despite concerns raised by the Eco-Network, other members of the public, and members of the TAC, Licence No. 3401 will allow for the construction of a multi-million dollar solar glass manufacturing facility without knowing:
 - a. If the human health, and safety concerns related to the increased traffic from sand extraction facilities, such as CPS's Wanipigow Sand Extraction Facility, have been adequately identified and monitored.
 - b. Who will be responsible for paying the costs to upgrade, maintain and repair damage to the transportation infrastructure, including, Hwy 304, Pine Falls Generating Station, and Hwy 59.
- 2. The failure of the Minister/Director to meaningfully include the public in the environmental assessment process.** Environment Act Licence No. 3401 was issued for the construction and operation of CPS's solar glass manufacturing facility in the City of Selkirk

without opportunity for meaningful public engagement through a public hearing. Despite numerous concerns identified by the public and requests for a hearing, no public hearing was held for this development. The hearing decision and the licensing decision were also made on the same day, which essentially rendered the appeal opportunity for the hearing decision moot.

The Eco-Network has been engaged in the environmental assessment and licensing of developments involving the extraction and processing of silica sand since 2020. There have been many concerns voiced by a broad range of stakeholders and numerous problems identified with the approval and assessment processes for silica sand developments in Manitoba. This includes developments proposed by proponents like CPS and Sio Silica Corporation, such as the Wanipigow Sand Extraction Project we have provided input on previously.

Impacts of Transportation of Silica Sand to Facility:

The assessment and licensing process, along with Licence No. 3401, has not adequately addressed the potential cumulative effects of this development and corresponding activities such as the transportation of large quantities of silica sand. Concerns from community members and other stakeholders about the potential impact of large scale hauling trucks, carrying silica sand from the Wanipigow Sand Extraction project, travelling on Hwy 304, crossing the Pine Falls Generating Station and travelling on Hwy 59 were documented during the assessment and licensing of CPS's Wanipigow Sand Extraction development. As part of the TAC review process in 2019, Manitoba Infrastructure also had concerns about the lack of information on this topic indicating that:

The Traffic Impact Study included in Appendix N of the project Environment Act Proposal was insufficient for our needs and only considered discrete locations in the immediate vicinity of the development (Development Access, Hollow Water Access, PR 304 Intersection). Given the projected increases in truck traffic and potential impacts to the provincial highway network, the proponent will need to conduct a Traffic Impact Study acceptable to and approved by Manitoba Infrastructure. The Traffic Impact Study will need to consider more broadly the potential impacts of the proposed development including the Hollow/Water Seymourville Access as well as PR 304 through to PTH 59. This Traffic Impact Study will need to consider items such as public safety, capacity, pavement strength, damage from loading, as well as provide options and make recommendations on mitigation measures to offset the impacts on the provincial highway network. Manitoba Infrastructure will require the opportunity to provide input to the Traffic Impact Study which will include crossing the Pine Falls Generating Station.

However, despite these concerns and requests for more information about the potential impacts of traffic, this issue was not adequately addressed in the final licence for the Wanipigow Project. There was also no public hearing held for this development, where such concerns could have been discussed in an open forum, despite numerous requests from the public.

The continuing concerns of the Eco-Network and other stakeholders have not been meaningfully addressed in the assessment and licensing process for the Selkirk Solar Glass Facility. In November 2022, the Network, and others from the public, provided comments identifying ongoing concerns with potential cumulative effects, such as, but not limited to the:

- a. Impact of traffic, including the impact of traffic from the Wanipigow extraction site;

- b. Impacts on local infrastructure such as Highway 304 and the Pine Falls Dam/Bridge. (i.e., Pine Falls Generating Station).

No additional information about the related Traffic Impact Study were provided. It continues to be unclear who will be responsible for monitoring potential impacts and mitigating any future harm that occurs to local infrastructure as a result of the increased silica sand traffic. Licence No. 3401 should not have been issued until further studies were undertaken by CPS and gaps identified in the approval process for the Wanipigow project were addressed.

Other Community Concerns:

Although this appeal letter focuses on gaps in information and other inadequacies related to the potential impacts of increased traffic on local infrastructure, there are other deficiencies with the assessment and licensing process that have been identified by other stakeholders, such as Camp Morning Star, the Manitoba Energy Justice Coalition, Our Line in the Sand, and Dennis LeNeveu that should be addressed before CPS is allowed to continue with the construction of the Solar Glass Facility. This includes concerns about:

- Impurities in the silica sand from Wanipigow that will require an acid wash or other processing before the sand can be used to produce solar glass;
- The failure of the government and CPS to consult with First Nations that will be impacted by increased traffic and other damage to local infrastructure associated with the transport of sand; and
- Ongoing problems with the licensing and assessment process in Manitoba that prevent meaningful engagement by the public and community members in environmental decision-making.

Public Hearing Decision:

Licence No. 3401 was issued the same day that the Minister announced his decision not to hold a public hearing for this development. The timing of these two actions is very problematic. The public should have an opportunity to appeal the decision with respect to no public hearing before a final licence is issued. By making the hearing decision and the licensing decision on the same day, the Minister has weakened public access justice and highlighted long-standing issues associated with meaningful public engagement in licensing decisions under *The Environment Act*.

This issue is not new, both the Manitoba Law Reform Commission¹ and the Manitoba Ombudsperson² have identified problems with the appeal process under *The Environment Act*. These challenges also include difficulty in accessing Orders in Council, and reasons for decision, including why past decisions have been denied. A weak and often insignificant appeal process has serious implications, including fostering a lack of public trust in our assessment and licensing process.

A more fulsome process would have provided a 30 day (minimum) window between the hearing decision and the issuance of the final licence. This would give the public a meaningful opportunity

¹ Manitoba Law Reform Commission, *Report 130: Manitoba's Environmental Assessment and Licensing Regime under The Environment Act* (2015), p. 83-86, online: http://www.manitobalawreform.ca/pubs/pdf/130-full_report.pdf

² Manitoba Office of the Ombudsman, *Ombudsman Investigation Report: File 2020-0658, Manitoba Environment, Climate and Parks* (November 2022).

to voice concerns about the hearing decision and provide some assurance that the regulator does not view its decision as final (i.e., not subject to the opportunity for reversal, based on credible evidence).

The current sequence of events suggests that appeals will be unsuccessful, and the decision will not change. The timing of the hearing and licensing decision has essentially rendered the public appeal process for the hearing moot, and therefore contributes to a decline in public trust in the process. A meaningful and effective appeal process is necessary to ensure citizens have access to justice and that democratic principles are entrenched in environmental decision-making.

Recommendation: Suspend Licence No. 3401

In the view of the Eco-Network, Licence No. 3401 should not have been issued until, at a minimum, the potential impact of increased traffic activity associated with the transportation of silica sand has been meaningfully assessed and a public hearing held. Ultimately, given the significant concerns raised by community members about the assessment process, the potential impacts of the development, and the gaps in publicly available information, it is the position of the Eco-Network that a licence should not have been issued for the Selkirk Solar Glass Manufacturing Facility at this time. The licence should be suspended until community concerns and information gaps are meaningfully addressed by CPS.

Based on the weak assessment and licensing process and the gaps in current licensing requirements, silica sand operations in this area appear to be unsustainable and unnecessary and will threaten the health of local residents and the environment.

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 Licence No. 3401 to protect the best interests of Manitobans now and in the future.

Sincerely,

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

Patricia Fitzpatrick, Ph.D.
Policy Committee Chair

Glen Koroluk
Executive 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.