



No. 26

Manitoba's *Water Protection Act*

Regulate First, Ask Questions Later



April 2006

By Rolf Penner and Dennis Owens

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About the Rural Renaissance Project

The Rural Renaissance Project (RRP) explores solutions to the issues facing our rural communities. Many of the challenges can be traced to old public policy models which may no longer be appropriate in today's wide-open, fast moving trading environment. In addition, the psychological malaise within the agricultural sector, exacerbated by downward trending commodity prices, threatens to overshadow the best ideas, projects and opportunities that abound in rural areas. The RRP takes the view that there are opportunities in the midst of adversity that call for a new focus on the advantages of living and working in rural communities. These advantages are waiting to be discovered, both from within and without. Lost in the negative public discussion are many success stories of local people whose stubborn perseverance has just "made it happen". The RRP will examine these bright spots so that we can learn what works.

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The Frontier Centre for Public Policy is an independent, non-profit organization that under-takes research and education in support of economic growth and social outcomes that will enhance the quality of life in our communities. Through a variety of publications and public forums, the Centre explores policy innovations required to make the eastern prairies region a winner in the open economy. It also provides new insights into solving important issues facing our cities, towns and provinces. These include improving the performance of public expenditures in important areas like local government, education, health and social policy.

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Executive Summary

- Manitoba's new *Water Protection Act* is poorly conceived.
- The provincial government is responding to a real problem, nutrient loading into Lake Winnipeg.
- The scientific basis for allocating responsibility for the increased nutrient load is dubious.
- Some claim that agricultural sources for phosphorus have received undue attention.
- The *Act* divides the province's farm land into zones, with different levels of regulation for each.
- They were based on recommendations from a committee studying the problem whose conclusions are based on unfirm assumptions.
- It is highly uncertain whether the *Act* can achieve its stated goals.
- Through the OECD, developed countries have created a template for intelligent, effective regulation.
- The process of consideration that resulted in the *Act* violated the provisions of that template in almost every respect.
- The *Act* should be reconsidered before its potential for economic damage is realized.

Introduction

On January 1, 2006, Manitoba's new *Water Protection Act* came into force.¹ Although the legislation has a noble purpose, its structural design is deeply flawed. It follows a classic regulatory model that emphasizes mandates and penalties, without sufficient regard for alternative methods with a proven record of success. Nobody questions its stated intent—cleaner water—but many stakeholders are concerned that, as written, it may not achieve that goal, even as it imposes significant compliance costs on those least able to assume that burden.

The motivation for the *Water Protection Act* is not in dispute. Over time, satellite photos have confirmed the progressive growth of a series of blue-green algae blooms in Lake Winnipeg. Despite the fact that scientific analysis and conclusions about the causes and import of these phenomena may differ, a consensus that this condition is not ultimately sustainable has clearly developed. Something needs to be done to prevent more damage, and perhaps to reverse



existing deterioration of the Lake's quality. The nature of that "something," however, is a matter of considerable disagreement.

The Problem

According to Alex Salki, a research biologist at Fisheries and Oceans Canada, "the use of phosphorus fertilizers and the rate of phosphorus accumulation in agricultural soils increased nearly threefold between 1960 and 1990" throughout the developed world.² The research conducted by him and his colleagues paints a bleak picture of that phenomenon's impact on Lake Winnipeg.

"If we look at the modeling work that's been done by Dr. Ray Hesslein," Salki says, from "1913 to 2000 we've had roughly . . . 40 or 50 % in increased load to the lake. . . From the perspective of Lake Winnipeg, we may have reached [a critical] point already because we have a disrupted ecosystem. The food-web structure has changed. You've got a predominance of blue-green algae there now, which is not a normal situation. What we're doing now is producing a product in that ecosystem which is not utilizable by the remaining web components. So ultimately, if this persists for very long, what will happen is that the fish production will ultimately suffer because that blue-green product cannot be consumed and used by the remaining parts of the food web."³



Lake Winnipeg, Salki reports, is especially vulnerable because its watershed is much larger than other lakes of the same size.⁴ The increased incidence of algae blooms is undoubtedly caused by nutrient loading, the release into Lake's Winnipeg's watershed of more phosphorus (P), although some have claimed that the problem has more to do with the ratio of P to nitrogen.

Where does the phosphorus come from? According to the Manitoba Phosphorus Expert Committee, a group formed in 2002 to study the problem, "Lakes and streams of southern Manitoba are naturally enriched with phosphorus. However, human activities also contribute additional phosphorus to the environment. Phosphorus is present in many detergents, and in fertilizers used for domestic and commercial purposes. Sewage from industry, towns, cities, and individual septic systems contribute phosphorus to the surface waters of the province. Agricultural sources of phosphorus to the environment include livestock manure, commercial fertilizers, and crop residues."⁵

P-Loading into Lake Winnipeg

Source	Percentage
External	53%
Natural	17%
Agriculture	15%
Urban	9%
Atmosphere	6%

Dr. Don Flaten, a University of Manitoba soil scientist, says more than half of what ends up in Lake Winnipeg is external. About a quarter is from

natural or atmospheric sources beyond our control, and the remaining quarter is due to human activity in Manitoba. As the chart on Page 2 indicates,⁶ the Province is assuming that the P-loading from human sources is calculated accurately, with the responsibility divided between “point” sources like municipal wastewater and industrial plants and “non-point” sources like farms.

Are the P-Sources Accurately Calculated?

The reliability of that calculation, however, is disputed by Les Routledge, who heads the Manitoba Sustainable Energy Association.⁷ He says that the 15% figure really represents “total rural load.” “The P-loading measured by the government comes from all non-point sources in rural Manitoba, not just current ag practices,” he insists. “Not once have I read or heard a media report that mentions urban storm drains, golf courses, or lake-front cabins as a problem.” Not all urban sources—storm drains, for instance, that flow directly into surface waters, not through sewage plants, and overland water flows from cities and towns—are assigned responsibility. “Why,” he asks, “do they allocate that contribution to ‘agriculture’ rather than what it really is, non-point sources that have not been researched or measured to date?”

That uncertainty is confirmed by Dr. Flaten:

You’re comparing what to what? What’s your high nutrient-loading comparison to your so-called low nutrient-loading? One of the things we haven’t talked about today is data collected in Alberta, where they’ve looked at situations comparing native rangeland to cultivated agricultural land with high concentrations of soil-test phosphorus. They found relatively little difference in phosphorus concentration in the water coming off the native rangeland, which is their control site, compared to their cultivated agricultural land.

What systems are you wanting to compare to determine that difference? We have almost no data to go with here in Manitoba to show substantial reductions in phosphorus loss for any particular [Beneficial Management Practices]. I think that’s an open question here for which we don’t have an answer. You might have a lot better information from collecting research data over a number of years in the U.S. But we don’t have very much.⁸

The problem is compounded by the irregular nature of P-loading into waterways and by the consequent difficulty in measuring responsibility for it. In a conference on the Water Act, held on February 13, 2006 by the Frontier Centre and the Manitoba Sustainable Energy Association, Dr. Andrew Sharpley, a pre-eminent scientist in this field, said identifying the worst sources of P-loading from farms is fraught with difficulty. When do you test? Most P leaves fields during the spring run-off or after major rain events. A site that looks healthy on one day may not be the next. Even within individual farms, one field may not offend while another only metres away is loaded.⁹

From Uncertain Science, Flawed Regulations

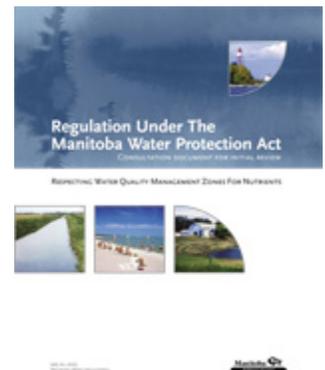
Despite this evident confusion over measuring sources and causation, the Province of Manitoba is insisting with its *Water Protection Act* that all parties who contribute to nutrient loading bear their fair share of the burden of reducing it. That process may well be successful with external and point sources, but can farmers comply?

Through the International Joint Commission, Manitoba's Department of Water Stewardship has negotiated a 10% reduction with North Dakota and Minnesota for P flowing into the province through the Red River, and it is also engaged in consultations with neighbouring provinces on similar plans for reducing their contribution to the problem. Similar arrangements with the City of Winnipeg, to cover both municipal effluent and industrial emissions, seem reasonable, and are not in dispute.¹⁰

As discussed above, diffuse, non-point sources of nutrient loading do not lend themselves as cleanly to simple regulation. The Department of Water Stewardship divided agricultural land in the province into four zones, with escalating levels of risk.¹¹ They are:

- **Zone 1:** Described as "highly productive lands," this classification covers about 60% of central and southern Manitoba that has a "relatively high risk of phosphorus and nitrogen loss to surface water."
- **Zone 2:** Less productive land, with "moderately productive soils" and "limited risk of phosphorus loss to surface water," this category describes about 11% of the same area.
- **Zone 3:** Marginally productive land, with higher "potential for nutrient loss," it covers about 10% of the same area.
- **Zone 4:** Generally non-productive lands which "present a high risk of loss of nutrients to groundwater and surface water," this describes most of the rest of the region, about 16% of the land mass in southern and central Manitoba, where no fertilization should occur and no septic field, sewage lagoons or manure storage facilities will be allowed.

Section 5(1) of the *Water Protection Act* says the government may make regulations "designating any area of the province as a water quality management zone for the purpose of protecting water" and governing, regulating or prohibiting any use, activity or thing in a water quality management zone or any part of a zone." "A regulation made under subsection (1)," it continues, "may contain a map showing (a) the boundaries of a zone; and (b) areas within a zone where a use, activity or thing is governed, regulated or prohibited."¹²



This mapping method proposed by the Province for displaying these zones has already been the object of much derision and complaint, and the Province is revising it on the fly. Since “farm groups and municipal officials have expressed several concerns, key among them the proposed use of soil maps,”¹³ the policy is changing after the law was written.

“We did initially intend that the maps be imbedded as part of the regulation,” Dwight Williamson told *Farmscape* in March, 2006, “and we’re proposing now that that not be the case.” But, he added with a classic touch of the bureaucrat unwilling to admit error, “We still want them referenced and we want them widely available and we’ll, of course, be committed to striving to update them with new information as that becomes available.”¹⁴

Aerial mapping doesn’t say much because it presents tableaux of immense complexity and tried to ram them into simplistic categorizations. Nor can one conclude with any certainty that the zones as presented have anything at all to do with nutrient loss. Even if some parts of the overlapping zones were actually at higher or lower risk for nutrient loss, that potential depends on other unknown conditions like weather.

If the maps don’t tell you much, why were they included in the law? It’s part of an old-fashioned regulatory mindset, one that assumes the validity of partial information. Such bureaucratic constructions may look good on paper, but given the uncertainty about measurement and assignments of risk, they are inherently flawed and not useful in practice.

What Nutrients are Coming Off Specific Lands?

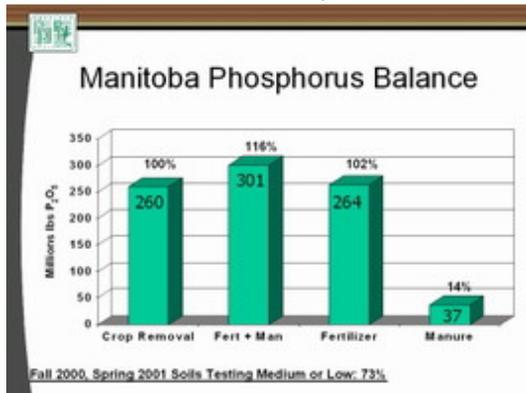
Can we rely on scientific data to confirm responsibility for nutrient loading? The Province’s most highly placed scientist in this field, Dr. Don Flaten, is not optimistic:

If you take a look, for example, at the University of Manitoba, at how many people we have dedicated towards nutrient management per se, I’m the only soil fertility person working in that area in our department. We used to have four or five people working on that; there’s only one now. There’s one person with Agriculture Canada in the Brandon research centre, and there’s one person with the province who’s focused on soil fertility and nutrient management. We actually have a relatively small group of people supported by the public infrastructure that are working at this environmental, agronomic interface. We have no field-scale hydrologists in this province at all, no scientist dedicated to looking at water management at the field scale, not one. We’re actually not that well equipped.¹⁵

The Province of Manitoba’s goal, as determined by the Manitoba Phosphorus Expert Committee, is to reduce P concentrations in agricultural soils to a threshold

below 60 parts per million. Although “soil testing is not a precise science,” the Committee proposed that as “the level at which measures should be instituted to slow down the rate of phosphorus accumulation in soil.”¹⁶ It should be noted that its final report was issued on the same day the *Water Protection Act* came into effect, a timing that hardly lent itself to sober consideration of its work.

“[O]ne of the most important mechanisms by which phosphorus enters surface waters in Manitoba,” the Committee’s report admits, “is thought to be as soluble phosphorus via snowmelt and spring runoff.



Unfortunately, however, this mode of phosphorus loss under Manitoba soil, landscape, and climatic conditions is not well understood.”¹⁷

Yet, despite this admitted ignorance, the Committee recommended the four zones described above and the restrictions on land use that were eventually adopted. It proposed the regulatory route adopted by other nearby jurisdictions, notable Minnesota and Ontario.

“The Committee has decided,” its report reads, “that the most promising approach to regulating the land application of phosphorus is to use soil test phosphorus threshold ranges to trigger a change in management.”¹⁸ Although the Committee goes into very specific detail about the threshold ranges and about the management changes that might mitigate P levels, it is less clear about the means of determining whether those thresholds have been met:

Soil testing for phosphorus is a useful tool for nutrient management and regulation, but it is not precise. This is because soil test phosphorus concentrations vary tremendously with time, space, and environmental conditions, even when no additional phosphorus is applied. Therefore, regulating solely on the basis of an absolute soil test phosphorus limit (i.e. a single value) would be very challenging. From the perspective of “legal proof”, there could be a significant number of mistakenly identified situations of apparently “excess phosphorus”. For this reason, it may be more effective to use soil test ranges to trigger a management response.¹⁹

Couldn’t we just measure how much phosphorus is coming into waterways? The Frontier’s Agricultural Policy Fellow, Rolf Penner, explains why that wouldn’t work:

The Province of Manitoba maintains a network of 46 water-monitoring stations along various streams and rivers to measure the level of phosphorus they contain. But limitations in the methodology used, and the small number of samples taken every year over the last two decades, means that the reliability of the data is questionable. Conclusions based on this testing have also never been duplicated, a basic tenant of science. Since these stations will be counted upon to measure progress, they require a

proper starting baseline, and assurances that the data is robust. There is little reason to believe that this is or can be the case.²⁰

Who will do the soil testing that determines whether or not a farm or livestock operation is in compliance with the restrictions in the Act? The Committee is silent on this issue, as is the *Act* itself. ManSEA's Les Routledge reports that "in OECD countries, the cost of complying with regulations for firms with less than 20 people was the equivalent of \$6,800 per year. Within this context, one can start to understand how over regulation of enterprises can be a destroyer of jobs and prevent the creation of new jobs."²¹

In the past, many countries have used regulatory instruments of this sort and have found them inadequate. Through the aegis of the Organization for Economic Co-operation and Development,²² its 34 member countries codified a set of standards for the construction, implementation and monitoring of environmental regulations.²³



The OECD and its Guidelines

The first set of OECD policy recommendations for regulatory reform, first endorsed by member countries in 1997, has evolved over time in a consistent testing of better practices. The document titled *OECD Guiding Principles for Regulatory Quality and Performance*, published in 2005, contains its most recent revisions.²⁴ This publication outlines a set of principles for governments to follow and implement in order to achieve stated public policy objectives.

As the document states in its preamble:

The goal of regulatory reform is to improve national economies and enhance their ability to adapt to change. Better regulation and structural reforms are necessary complements to sound fiscal and macroeconomic policies. Continual and far-reaching social, economic and technological changes require governments to consider the cumulative and inter-related impacts of regulatory regimes, to ensure that their regulatory structures and processes are relevant and robust, transparent, accountable and forward-looking. Regulatory reform is not a one-off effort but a dynamic, long-term, multi-disciplinary process.²⁵

The guidelines originally tackled the issue of reducing the scale of government. Over the following decade, member countries adopted a more holistic approach. Through constant fine-tuning, they discovered that intelligent regulation was more important than less. A "whole-of-government" perspective, one that promotes "a strong competition culture and liberalization of entry barriers, the use of regulatory impact analysis and consideration of alternatives to regulation, and the

integration of market openness criteria in regulatory processes,"²⁶ eventually became the gold standard. When governments shop elsewhere for services or set up markets to solve problems—to use the OECD's excellent language—building "regulatory quality and performance" into the framework makes all the difference.

How Does Manitoba's *Water Protection Act* Rate?

The OECD lays out eight basic principles for judging whether regulation is "good" or, to use a better word, "smart." When benchmarked against the standards in detail, the *Act* consistently fails the test. "Good regulation should:"²⁷

- 1. Serve clearly identified policy goals, and be effective in achieving those goals.** The government has outlined a clear goal to reduce the level of nutrients entering Lake Winnipeg by 10%. However, the government has not identified specific means of benchmarking whether its mandates for reducing non-point sources of P can effectively meet that objective. Perhaps P levels will decline in Lake Winnipeg; perhaps they won't.
- 2. Have a sound legal and empirical basis.** The government has established that nutrient levels are increasing in Lake Winnipeg and the Province has legal jurisdiction over water quality in the Lake. But the scientific logic that purports to underpin the *Act* is based on vague assumptions divorced from practical experience in other places. The sources of the nutrients as documented by the government's research reports do not add up nor do they find where the problem has been occurring.
- 3. Produce benefits that justify costs, considering the distribution of effects across society and taking economic, environmental and social effects into account.** Was the *Water Protection Act* subjected to a thorough cost-benefit analysis? Williamson replies, "There is some work underway on that, but that work has not yet been completed."²⁸ The government has not examined alternatives to direct regulation to achieve their policy goals and they have not considered the cost or impact of implementing the regulations from the perspective of an individual farmer.
- 4. Minimize costs and market distortions.** What about assistance for farmers? Williamson says that funding for the costs of compliance is possible, but it would be limited to top-ups for existing federal programs.²⁹ The government has not provided any guarantees for such top-ups, only vague assurances. As for market distortions, existing operations have some lead time under the *Act*—they do not have to come into full compliance until 2013. But new start-ups must comply immediately. Will that deter expansion of agriculture and agri-business? "That's a point that I'm not certain of," Williamson admits.³⁰
- 5. Promote innovation through market incentives and goal-based approaches.** What about using the tradable permits that reduced air and water pollution so successfully in other places? The Lake Winnipeg Stewardship Board rejected them. "Trading in pollution?" one participant

exclaimed. "What's next, trading permits for venereal disease?" Williamson says they could be explored in the future, once the P load is reduced.³¹ In other words, abandon an effective tool for solving a problem in favour of less effective methods. Nor has the government examined the implementation of Beneficial Management Practices as an alternative to the proposed regulations.³²

- 6. Be clear, simple and practical for users.** Aerial mapping that describes the four regulatory zones is a confusing hodgepodge. Soil testing that farmers must conduct to meet the *Act's* mandates cannot reliably tell them if they are in compliance. Nor is it practical for cattle producers located on Zone 4 lands to meet the standards of the regulations with respect to livestock winter grounds.
- 7. Be consistent with other regulations and policies.** The regulations are not consistent with, and in some respects duplicate, regulations for livestock producers set out under the *Manure and Mortalities Management Act*.³³
- 8. Be compatible as far as possible with competition, trade and investment-facilitating principles at domestic and international levels.** The *Water Protection Act* provides an uneven playing field that discriminates between producers in different land zones and between existing producers and potential ones. It will most heavily impact the most successful sector of Manitoba's agriculture industry, livestock producers.

Other principles of good regulation identified by the OECD were also ignored by the *Act's* writers. Governments should review regulations from the point of view of those affected, rather than the regulator, and consider alternatives to regulation where appropriate and possible, including self regulation. The government has rejected suggestions to examine alternative policies to achieve these policy goals and has rejected offers from the agricultural sector to achieve them through the environmental farm planning process.

Most tellingly, the OECD calls on governments to conduct a regulatory impact analysis for any new regulations. The government of Manitoba has not.

Conclusion

Everybody wants clean water, and remedial action to reverse the deterioration of Lake Winnipeg is a proper function of government. But Manitoba's *Water Protection Act* provides a means of achieving those goals that is clearly inferior to other methods. The Act tries to mandate actions that may or may not reduce nutrient loading. In the process, it imposes compliance costs on the agricultural sector that are out of line with its contribution to the overall problem.

What other means are available? The enormous success of the Chesapeake Bay Project points in another direction. Instead of using top-down dictates, mechanisms of command and control and imposed costs, Dr. Andrew Sharpley and

his colleagues went out into the field. They encouraged better management practices, identified peer leaders in the farming community and worked with them in a constructive manner to reduce nutrient loading. They took their findings to county fairs and agricultural expositions and preached their message to whomever would listen. They reduced nutrient loading by far more than the 10% goal sought by the government of Manitoba.³⁴

Why do we think we can invent a better wheel? It beggars the imagination to see a modern government design and impose a regulatory regime in the complete absence of any understanding of the best practices recommended by the OECD, a framework for regulatory excellence and effectiveness fine-tuned by the world's best experts over long years of trial and error.

Manitoba's *Water Protection Act* should be reconsidered. An inadequate response to a very real problem with Lake Winnipeg, it was conceived in the context of an out-of-date regulatory policy, and will likely not achieve its stated goals.

Footnotes

¹ The text of the *Water Protection Act* is included as Appendix I.

² Alex Salki PowerPoint presentation, Water Quality Management Conference, Frontier Centre for Public Policy, February 13, 2006, available at [http://www.fcpp.org/pdf/Nutrients%20and%20Water%20Quality,%20Alex%20Salki\(1\).pdf](http://www.fcpp.org/pdf/Nutrients%20and%20Water%20Quality,%20Alex%20Salki(1).pdf)

³ http://www.fcpp.org/main/publication_detail.php?PubID=1330

⁴ More satellite photos collected by the University of Manitoba are available at <http://home.cc.umanitoba.ca/~gmccullo/LWmod050919&21.jpg>

⁵ The full report is available at

http://www.gov.mb.ca/conservation/regoperations/livestock/pdf/final_report_manitoba_phosphorus_expert_committee.pdf

⁶ Dr. Don Flaten's PowerPoint presentation, Frontier Centre Water Conference, February 13, 2006, available at <http://www.fcpp.org/images/publications/PProcessesBMPsinMB2006.pdf>

⁷ Routledge's complaints about a bias in the process of measurement of P sources were voiced in series of e-mails to the editor of *GrainNews*.

⁸ http://www.fcpp.org/main/publication_detail.php?PubID=1330

⁹ Videotapes of Dr. Sharpley's presentations are available at http://www.fcpp.org/main/media_file_wm.php?StreamID=390 and http://www.fcpp.org/main/media_file_wm.php?StreamID=392

¹⁰ <http://www.meia.mb.ca/pdfs/Knowledge/Emerging%20Issues/Emeging%20Issues%202005/Dwight%20Williamson.pdf>

¹¹ Ibid.

¹² The text of the *Water Protection Act* is included as Appendix I.

¹³ *Farmscape*, March 17, 2006, available at

<http://www.farmscape.ca/f2ShowScript.aspx?i=21979&q=Proposed+Manitoba+Water+Quality+Regulations+to+be+Fine+Tuned+Before+Adoption>

¹⁴ Ibid.

¹⁵ http://www.fcpp.org/main/publication_detail.php?PubID=1330

¹⁶ http://www.gov.mb.ca/conservation/regoperations/livestock/pdf/final_report_manitoba_phosphorus_expert_committee.pdf

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ http://www.fcpp.org/main/publication_detail.php?PubID=1342

²¹ E-mail from Les Routledge, March 4, 2006. More discussion of that figure is available from the OECD itself, and from www.heritage.org.

²² From its mission statement, "The Organization for Economic Co-operation and Development is a unique forum where the governments of 30 market democracies work together to address the economic, social and governance challenges of globalization as well as to exploit its opportunities. The Organization provides a setting where governments can compare policy experiences, seek answers to common problems, identify good practice and co-ordinate domestic and international

policies. It is a forum where peer pressure can act as a powerful incentive to improve policy,” available at http://www.oecd.org/document/18/0,2340,en_2649_201185_2068050_1_1_1_1,00.html#what .

²³ The OECD *Guiding Principles for Regulatory Quality and Performance* are available at the organization’s website, at <http://www.oecd.org/dataoecd/24/6/34976533.pdf>, and are included as Appendix II.

²⁴ The *OECD Guiding Principles for Regulatory Quality and Performance*, op. cit.

²⁵ Ibid.

²⁶ Ibid.

²⁷ Ibid.

²⁸ http://www.fcpp.org/main/publication_detail.php?PubID=1330

²⁹ Ibid.

³⁰ Ibid.

³¹ Ibid.

³² Beneficial Management Practices encouraged in the Chesapeake Bay Project, headed by Dr. Andrew Sharpley, reduced nutrient loading by 75%. Discussions of BMPs are available from the Manitoba Pork Council at

<http://www.manitobapork.com/environ.php> and in Dr. Don Flaten’s and Dr. Sharpley’s presentations to the Frontier Centre

Water Quality Conference at http://www.fcpp.org/main/media_file_wm.php?StreamID=394,

http://www.fcpp.org/main/media_file_wm.php?StreamID=390 and

http://www.fcpp.org/main/media_file_wm.php?StreamID=392

³³ <http://www.gov.mb.ca/conservation/pub-archive/publs98/manure.html>

³⁴ Ibid.

Appendix I

C.C.S.M. c. W65

The Water Protection Act

(Assented to June 16, 2005) (Proclaimed January 1, 2006)

WHEREAS an abundant supply of high quality water is essential to sustain all ecological processes, life-support systems and food production, and is paramount to the environmental, economic and social well-being of Manitoba now and in the future;

AND WHEREAS access to sufficient, safe, acceptable, and affordable water for personal and domestic uses is internationally recognized as a fundamental right of citizens;

AND WHEREAS the Government of Manitoba recognizes the importance of the Canada-United States Boundary Waters Treaty and other inter-jurisdictional agreements protecting water, and the shared right and responsibility of all jurisdictions in the Hudson Bay drainage basin to protect water resources within the basin;

AND WHEREAS to most effectively ensure that drinking water is kept clean, safe and reliable,

it is necessary to complement the provisions of *The Drinking Water Safety Act* with additional measures to protect drinking water sources;

AND WHEREAS Manitobans recognize that many human activities, including the use and consumption of water for all purposes, the production of waste and wastewater effluent, and industrial, agricultural and recreational activities, may impair the quality and quantity of our water resources, and that stewardship of these invaluable resources is a responsibility shared by all;

AND WHEREAS the Government of Manitoba is committed to watershed planning as an effective means to address risks to water resources and aquatic ecosystems, and believes that residents of watersheds should be consulted when watershed plans are developed;

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:

PART 1

INTRODUCTORY PROVISIONS

Definitions

1(1) The following definitions apply in this Act.

“approved watershed management plan” means a watershed management plan approved under Part 3.

“aquatic ecosystem” means the components of the earth related to, living in or located in or on water or the beds or shores of a water body, including but not limited to

(a) all organic and inorganic matter, and

(b) all living organisms and their habitat,

and their interacting natural systems.

“conservation district” means a district as defined in *The Conservation Districts Act*.

“development plan” means a development plan as defined in *The Planning Act*.

“director” means a person designated under section 3 as a director of water protection.

“groundwater” means all water under the surface of the ground, whether in solid or liquid form.

“invasive species” means an organism designated in the regulations as an invasive species.

“minister” means the minister appointed by the Lieutenant Governor in Council to administer this Act.

“municipality” includes a community as defined in *The Northern Affairs Act*.

“**nutrient**” means any substance that provides nourishment and promotes growth of aquatic organisms when transmitted to water.

“**person**” includes a municipality, partnership, limited partnership, limited liability partnership, syndicate, trustee and joint venture, and an association of persons.

“**planning district**” means a planning district as defined in *The Planning Act*.

“**prescribed**” means prescribed by regulation.

“**riparian area**” means an area of land on the banks or in the vicinity of a water body, which due to the presence of water supports, or in the absence of human intervention would naturally support, an ecosystem that is distinctly different from that of adjacent upland areas.

“**water**” means all surface water and groundwater, whether in solid or liquid form.

“**water body**” means any body of flowing or standing water, whether naturally or artificially created, and whether the flow or presence of water is continuous, intermittent or occurs only during a flood, including but not limited to a lake, river, creek, stream, slough, marsh, swamp and wetland, including ice on any of them.

“**water council**” means the Manitoba Water Council established in section 24.

“**water planning authority**” means a water planning authority designated for a watershed under section 14.

“**watershed**” means an area designated as a watershed under section 14.

Reference to “Act” includes regulations

1(2) A reference to “this Act” includes the regulations made under this Act.

Purpose of the Act

2 The purpose of this Act is to provide for the protection and stewardship of Manitoba's water resources and aquatic ecosystems, recognizing

- (a) that Manitoba's social and economic well-being is dependent upon the sustained existence of a sufficient supply of high quality water;
- (b) the importance of comprehensive planning for watersheds, with respect to water, land and ecosystems, on a basis that acknowledges and considers their interdependence;
- (c) that water resources and aquatic ecosystems require protection to ensure the high quality of drinking water sources;
- (d) the importance of applying scientific information in decision-making processes about water, including the establishment of standards, objectives and guidelines;
- (e) the need to protect riparian areas and wetlands; and
- (f) the benefits of providing financial incentives for activities that protect or enhance water, aquatic ecosystems or drinking water sources.

Director of water protection

3 The minister may designate one or more persons as directors of water protection.

PART 2

WATER PROTECTION

WATER QUALITY STANDARDS, OBJECTIVES AND GUIDELINES

Water quality standards, objectives and guidelines

[4\(1\)](#) The Lieutenant Governor in Council may make regulations setting or adopting water quality standards, objectives or guidelines.

Standards, etc. for use in approvals under other Acts

[4\(2\)](#) A regulation under subsection (1) may provide that a person issuing an approval or making a decision under *The Environment Act* or any other specified Act or regulation must

- (a) consider the standard, objective or guideline; or
- (b) in circumstances specified in the regulation, refuse to issue an approval or make a decision unless its effect will ensure compliance or consistency with the standard, objective or guideline.

WATER QUALITY MANAGEMENT ZONES

Water quality management zones

[5\(1\)](#) On the recommendation of the minister, the Lieutenant Governor in Council may make regulations

- (a) designating any area of the province as a water quality management zone for the purpose of protecting water, aquatic ecosystems or drinking water sources;
- (b) governing, regulating or prohibiting any use, activity or thing in a water quality management zone or any part of a zone.

Considerations in recommending regulations re zone

[5\(2\)](#) Before recommending that a regulation be made under subsection (1), the minister may consider scientific and other information relating to

- (a) the physical characteristics of land in the area, including its topography and soil types;
- (b) the ability of the soil or water in the area, or water downstream of the area, to assimilate nutrients and other pollutants;
- (c) water bodies or groundwater in the area, including information relating to
 - (i) the water quality characteristics of the water,
 - (ii) the susceptibility of the water to contamination or adverse changes in level or in-stream flow, and
 - (iii) the extent to which the water is pristine or relatively undisturbed by human activity;
- (d) the area's aquatic ecosystems;
- (e) whether the area contains a source, or a potential source, of drinking water;
- (f) whether the area supports species that are sensitive to alterations in water quality or quantity resulting from human activity;
- (g) whether the area provides habitat for endangered species; and
- (h) any other matter that the minister considers relevant.

Additional considerations

[5\(3\)](#) Before recommending that a regulation be made under subsection (1), the minister must also consider

- (a) water quality standards, objectives and guidelines that apply to the area;

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- (b) approved watershed management plans that apply to the area; and
 - (c) the proximity of the area to a national park, provincial park, ecological reserve or other protected area.

Maps of zones

[5\(4\)](#) A regulation made under subsection (1) may contain a map showing

- (a) the boundaries of a zone; and
- (b) areas within a zone where a use, activity or thing is governed, regulated or prohibited.

Consultation with water planning authority

[6](#) Before a regulation is made under subsection 5(1), the minister may consult with any water planning authority that has been designated in respect of an area proposed to form all or part of the water quality management zone. This consultation does not affect any requirement for other consultation under this Act.

Advertising proposed regulations

[7\(1\)](#) At least 90 days before a regulation is made under subsection 5(1), the minister must, in a newspaper of general circulation in the affected area, advertise the fact that a draft of the proposed regulation has been filed in the public registry.

Written objections

[7\(2\)](#) Within 60 days after an advertisement is published under subsection (1), and subject to subsection (3), any person may refer a written objection to the proposed regulation to a director, in a form approved by the minister.

Scientific or technical information

[7\(3\)](#) An objection under subsection (2) must be based on written scientific or technical information relating to an area proposed to form all or part of the water quality management zone. This information must be provided to the director at the time the objection is referred.

Director's actions

[7\(4\)](#) Upon receiving an objection under subsection (2), the director must

- (a) notify the minister that an objection has been received; and
- (b) consider the objection, and the supporting scientific or technical information.

Advice to the minister

[7\(5\)](#) Within 60 days after notifying the minister of the objection, the director must give advice to the minister as to whether the proposed regulation should be varied or revised.

Expert advice re scientific or technical issues

[7\(6\)](#) Before providing advice under subsection (5), if the director determines that there is an unresolved scientific or technical issue, he or she must obtain expert advice in such a manner as may be set out in the regulations.

Review of regulation

[8](#) The minister must, not later than five years after the date on which a regulation under section 5 comes into force, require the water council to

- (a) review the effectiveness of the regulation and, in the course of that review, consult with any persons affected by the regulation that the council considers appropriate; and
- (b) recommend, if it considers it advisable, that the regulation be amended or repealed.

The minister may, in addition, require the council to undertake such a review at any other time.

INVASIVE SPECIES

Invasive species

[9](#) The Lieutenant Governor in Council may make regulations governing, regulating or prohibiting the importation, possession, transfer or release of invasive species.

WATER CONSERVATION

Regulations re water conservation

[10](#) The Lieutenant Governor in Council may make regulations

- (a) establishing water conservation programs;
- (b) generally respecting the reduction of water usage in Manitoba.

SERIOUS WATER SHORTAGE

Declaration of serious water shortage

[11\(1\)](#) If the minister considers that extraordinary measures are necessary to ensure a reasonable water supply, the minister may declare a serious water shortage in respect of all or part of Manitoba.

Actions by minister during serious water shortage

[11\(2\)](#) If a serious water shortage is declared, the minister may take any action, make any regulation or issue any order that in his or her opinion is necessary to prevent, minimize or alleviate the water shortage.

Communication of serious water shortage

[11\(3\)](#) Immediately after

- (a) a serious water shortage is declared under subsection (1); or
- (b) a regulation is made or an order is issued under subsection (2);

the minister must ensure that the details of the declaration, regulation or order are communicated by the most appropriate means to persons affected by it.

Declaration that shortage has ended

[11\(4\)](#) The minister may declare that a serious water shortage has ended.

Regulations Act does not apply

[11\(5\)](#) *The Regulations Act* does not apply to

- (a) a declaration of a serious water shortage made under subsection (1) or a declaration that a serious water shortage has ended made under subsection (4); or
- (b) a regulation made or an order issued under subsection (2).

Order prevails over *The Water Rights Act*

[11\(6\)](#) Unless otherwise stated in the regulation or order, a regulation or order under this section prevails over a permit or licence issued under *The Water Rights Act*.

No injunction

[11\(7\)](#) No injunction lies against the minister, or any person acting under the authority of a regulation or order, to restrain or prevent a person from taking measures under this section.

Action by minister if order not complied with

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- [12\(1\)](#) If a person fails to comply with an order issued by the minister, the minister may
- (a) cause anything to be done that is required by the order; and
 - (b) take any other measures that the minister considers necessary to prevent, minimize or alleviate the water shortage.

Order to pay costs

[12\(2\)](#) Upon taking any action under clause (1)(a), the minister may order the person to whom the order was directed to pay the costs of taking that action.

Enforcing cost-recovery order

[12\(3\)](#) An order to pay costs made under subsection (2) may be filed in the Court of Queen's Bench and enforced as if it were an order of the Court.

Compensation where allocation cancelled or reduced

[13\(1\)](#) Where the effect of any action taken or regulation or order made under subsection 11(2) is to

- (a) cancel or reduce the allocation of water at any point or place to a person holding a licence under *The Water Rights Act*; and
- (b) allocate or increase the allocation of water at that point or place to another person who does not hold a licence, or whose licence is, relative to the licence referred to in clause (a), lower in precedence under section 8 (precedence of licences) of *The Water Rights Act*;

the person whose allocation is cancelled or reduced is entitled to receive from, and shall be paid by the other person, compensation for any loss or damage resulting from the cancellation or reduction.

No compensation in certain circumstances

[13\(2\)](#) Despite subsection (1), no compensation is payable where the action is taken, or the regulation or order is made, for a purpose relating to public health or the provision of drinking water. The determination of the purpose of the action, regulation or order is to be made by the minister.

Agreement respecting compensation

[13\(3\)](#) Within 60 days after action is taken or an order or regulation is made that has the effect described in subsection (1), the persons described in that subsection may make an agreement setting out

- (a) the amount of compensation payable and the terms of payment; and
- (b) the undertaking of one person to pay that compensation, on those terms, to the other person.

Arbitration

[13\(4\)](#) Where an agreement under subsection (3) is not made, the amount of compensation and the terms of payment must be determined in accordance with *The Arbitration Act*.

PART 3

WATERSHED MANAGEMENT

WATERSHED MANAGEMENT PLANS

Designation of watersheds and authorities

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- 14** The Lieutenant Governor in Council may by regulation
- (a) designate a watershed for the purposes of this Act, and specify its boundaries;
 - (b) designate a water planning authority for a watershed, which may be
 - (i) the board of a conservation district,
 - (ii) the board of a planning district,
 - (iii) the council of a municipality,
 - (iv) any other person or entity, or
 - (v) a joint authority consisting of two or more entities or persons described in subclauses (i) to (iv);
 - (c) prescribe the date by which the authority must submit a watershed management plan for approval, terms of reference for the preparation of the plan, and any other terms or conditions that the Lieutenant Governor in Council considers necessary.

Considerations in preparing a plan

15 In preparing a watershed management plan, a water planning authority must consider the following:

- (a) water quality standards, objectives and guidelines that apply to the watershed;
- (b) whether a water quality management zone is included within any part of the watershed, and if so, any regulations made under section 5 respecting the zone;
- (c) studies that the authority considers relevant relating to water, land use, demographics, the capacity of the environment to accommodate development, and any other matter related to present or future physical, social or economic factors;
- (d) comments received through public consultation or public meetings held under section 17;
- (e) prescribed water management principles;
- (f) relevant provincial land use policies, development plans, and zoning by-laws;
- (g) any other information that the authority considers relevant.

Content of a watershed management plan

- 16(1)** A watershed management plan must
- (a) identify issues relating to the protection, conservation or restoration of water, aquatic ecosystems and drinking water sources in the watershed;
 - (b) contain objectives, policies and recommendations respecting some or all of the following:
 - (i) the protection, conservation or restoration of water, aquatic ecosystems and drinking water sources,
 - (ii) the prevention, control and abatement of water pollution, including wastewater and other point-source discharges, and non-point sources of pollution,
 - (iii) land drainage and flood control, including the maintenance of land drainage and flood control infrastructure,
 - (iv) activities in water quality management zones, riparian areas, wetlands, flood areas, flood plains and reservoir areas,

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- (v) water demand management, water use practises and priorities, the conservation of water supplies, and the reduction of water use and consumption during droughts and other periods of water shortage,
 - (vi) the supply, distribution, storage and retention of water, including measures to ensure persons in the watershed have access to clean potable water,
 - (vii) emergency preparedness to address spills, accidents and other emergencies that may affect water, an aquatic ecosystem or a drinking water source;
- (c) specify linkages between water management and land use planning so as to facilitate the adoption, in a development plan or other planning instrument, of some or all of the provisions of the watershed management plan; and
- (d) identify ways in which the plan can be implemented, monitored and evaluated, recognizing the need to implement the plan with the assistance of individuals, groups, and organizations.

Additional content

[16\(2\)](#) A watershed management plan may also

- (a) contain maps to assist in its interpretation; and
- (b) specify a date by which the plan must be reviewed.

Consultation

[17\(1\)](#) In preparing a watershed management plan, the water planning authority must consult with the following:

- (a) if land within the watershed is in a conservation district or planning district, the board of that district;
- (b) the council of any municipality located wholly or partly within the watershed;
- (c) any band, as defined in the *Indian Act* (Canada), that has reserve land within the watershed; and
- (d) any other person or entity specified by the minister.

Public meetings

[17\(2\)](#) The water planning authority must hold one or more public meetings to consult with residents of the watershed on the preparation of the plan.

Plan to be submitted to minister for approval

[18](#) A water planning authority must submit its watershed management plan to the minister for approval.

Referral of plan to the water council

[19\(1\)](#) After receiving a proposed plan, the minister may refer it to the Manitoba Water Council for its review and advice.

Approval of the minister

[19\(2\)](#) If the proposed plan is satisfactory to the minister, the minister may approve it in the form in which the water planning authority submitted it.

Referral of plan back to authority

[19\(3\)](#) If the proposed plan is not satisfactory to the minister, the minister may refer it back to the water planning authority to be revised in accordance with any directions that the minister

makes.

Revision of plan

[19\(4\)](#) The water planning authority must revise a proposed plan that is referred back to it in accordance with the minister's directions, and re-submit it to the minister for approval within the time required by the minister.

Amending a plan after approval

[20\(1\)](#) If a water planning authority proposes to make any amendments to an approved plan, it must submit them to the minister for approval.

Minister may require amendments

[20\(2\)](#) In addition, the minister may require a water planning authority to make amendments to an approved plan about any matter the minister specifies, and the authority must prepare the amendments and submit them to the minister for approval.

Section 19 applies

[20\(3\)](#) Section 19 applies to amendments under this section.

Notice of an approved plan

[21](#) The minister must provide notice of the approval or amendment of a watershed management plan in accordance with any requirements specified in the regulations.

Periodic review

[22](#) A water planning authority must review its approved watershed management plan, in accordance with the regulations,

- (a) when directed to do so by the minister; and
- (b) on or before any review date specified in the plan.

Sections 15 to 21 apply to the review of a plan, and its approval, with the necessary changes.

Plan to be considered in decision-making

[23](#) The Lieutenant Governor in Council may, by regulation, require that an approved watershed management plan be considered before a prescribed decision is made or a prescribed approval is issued under this or any other specified Act or regulation.

MANITOBA WATER COUNCIL

Manitoba Water Council

[24](#) The "Manitoba Water Council" is established.

Responsibilities of the water council

[25](#) The water council has, subject to the direction of the minister, the following responsibilities:

- (a) to monitor the development and implementation of watershed management plans in the province;
- (b) to review regulations respecting water quality management zones, and provide advice to the minister;
- (c) to advise the minister about matters relating to water generally;
- (d) to coordinate the activities of advisory boards and similar entities that perform functions relating to water, including advisory boards and other entities specified by regulation;

(e) to assist in reporting sustainability indicators relating to water.

The water council must also perform any other duties assigned to it by an Act or regulation.

Members

[26\(1\)](#) The water council is to consist of at least five members appointed by the Lieutenant Governor in Council, who in the opinion of the Lieutenant Governor in Council are representative of the regional diversity of Manitoba and of local government, agricultural and environmental perspectives.

Term of office

[26\(2\)](#) The term of a member is as specified by the Lieutenant Governor in Council in the appointment, and a member continues to hold office until he or she is reappointed, a successor is appointed or the appointment is revoked.

Chair and vice-chair

[26\(3\)](#) The Lieutenant Governor in Council must designate one of the members of the water council as chair and may designate another member as vice-chair.

Expenses

[27](#) Each member of the water council may be reimbursed for such reasonable expenses as may be approved by the minister.

Minister may refer matter to water council

[28](#) The minister may refer any matter within the water council's responsibilities to the water council. The water council must, in accordance with the terms of reference, consider the matter and give the minister a written report of its findings and recommendations.

WATER STEWARDSHIP FUND

Water Stewardship Fund

[29\(1\)](#) The "Water Stewardship Fund" is established, consisting of

- (a) amounts appropriated by an Act of the Legislature for the fund;
- (b) contributions received from any source by way of grant, gift, donation or bequest;
- (c) interest or other income earned from the investment of money in the fund;
- (d) amounts received under a Federal-Provincial agreement or any other agreement; and
- (e) any other money received by the fund.

Fund to be held in separate trust account

[29\(2\)](#) The fund is to be under the control and supervision of the Minister of Finance and must be held in trust for the purposes specified in subsection (3), in a separate account in the Consolidated Fund.

Purposes of the fund

[29\(3\)](#) The purposes of the fund are

- (a) to provide grants in support of research, projects and activities that further the purpose of this Act;
- (b) to provide grants to assist in the implementation of watershed management plans or water conservation programs; and
- (c) to support any other water management or water quality purpose that the Lieutenant Governor in Council considers advisable.

Payments out of fund

- [29\(4\)](#) Subject to the regulations, payments may be made out of the fund for
- (a) the amount of any grant made by the minister that is consistent with the purpose of the fund, on any terms and conditions he or she considers appropriate;
 - (b) the cost of marketing and promoting the fund or a funded project; and
 - (c) administrative and reporting costs associated with the fund, including salaries and contract expenses.

Fund not public money

[29\(5\)](#) The money contained within the fund, other than amounts credited to the fund under clause (1)(a), is not public money within the meaning of *The Financial Administration Act*.

Regulations respecting the fund

- [29\(6\)](#) The Lieutenant Governor in Council may make regulations
- (a) respecting grants, including the terms and conditions on which grants may be made by the minister; and
 - (b) respecting the fund and any payments authorized by subsection (4) to be made from the fund.

PART 4

COMPLIANCE AND GENERAL PROVISIONS

Designation of officers

[30](#) The minister may designate any persons, or the members of any class of persons, as officers for the purposes of this Act.

Inspection authority of officers

[31\(1\)](#) When reasonably required to administer or determine compliance with this Act, an officer may enter and inspect any place or premises, other than a dwelling, at any reasonable time.

Entry into dwelling with consent

[31\(2\)](#) Despite subsection (1), an officer may enter and inspect a dwelling with the consent of the owner or occupant.

Warrant for entry into dwelling

[31\(3\)](#) On application by an officer, a justice may at any time issue a warrant authorizing the officer and any other person named in the warrant to enter and inspect a dwelling, if the justice is satisfied there are reasonable grounds to believe that

- (a) entry to the dwelling is necessary for the purpose of administering or determining compliance with this Act; and
- (b) in respect of the dwelling,
 - (i) entry has been refused or there are reasonable grounds to believe that entry will be refused,
 - (ii) the occupant is temporarily absent, or
 - (iii) the dwelling is unoccupied.

Conditions

[31\(4\)](#) A warrant may be made subject to any conditions specified in it.

Assistance to officials

[31\(5\)](#) In exercising a power under this section, an officer may use such force or obtain such assistance from a peace officer or other person as he or she considers necessary.

Additional inspection powers

[32\(1\)](#) In addition to the powers referred to in section 31, when reasonably required to administer or determine compliance with this Act, an officer may

- (a) make any inspection, investigation, examination, test, analysis or inquiry that he or she considers necessary;
- (b) require any substance, thing, solid, liquid, gas, plant, animal or other organism to be produced for inspection, examination, testing or analysis;
- (c) take samples of or seize any substance, thing, solid, liquid, gas, plant, animal or other organism; and
- (d) take photographs or other images of a place or premises, or any condition, process, substance, thing, solid, liquid, gas, plant, animal or other organism located at or in it.

Use of data processing system and copying equipment

[32\(2\)](#) In carrying out an inspection under this Act, an officer may

- (a) use a data processing system at the place where the records, documents or things are kept to examine any data contained in or available to the system;
- (b) reproduce, in the form of a printout or other intelligible output, any record from the data contained in or available to a data processing system at the place; and
- (c) use any copying equipment at the place to make copies of any record or document.

Assistance to officials

[32\(3\)](#) A person who has custody or control of a record, document or thing referred to in subsection (1) or (2) must give the officer

- (a) all reasonable assistance to enable the officer to carry out his or her duties; and
- (b) any information that the officer may reasonably require.

OFFENCES AND PENALTIES

Offences

[33\(1\)](#) A person is guilty of an offence who

- (a) contravenes a provision of this Act, or fails to comply with a provision of an order issued under this Act;
- (b) makes a false statement to an officer or any other person acting under the authority of this Act;
- (c) provides a false statement in an application, record or other document given or required under this Act; or
- (d) hinders, obstructs or interferes with or attempts to hinder, obstruct or interfere with an officer or any other person acting under the authority of this Act.

Continuing offence

[33\(2\)](#) When a contravention of this Act or a failure to comply with an order issued under this Act continues for more than one day, the person is guilty of a separate offence for each

day the contravention or non-compliance continues.

Directors and officers of corporations

[33\(3\)](#) If a corporation commits an offence under this Act, a director or officer of the corporation who authorized, permitted or acquiesced in the commission of the offence is also guilty of the offence.

Penalties for individuals

[33\(4\)](#) Except as provided in subsection (5), a person who is guilty of an offence under this Act is liable on summary conviction,

- (a) for a first offence, to a fine of not more than \$50,000 or imprisonment for a term of not more than six months, or both; and
- (b) for each subsequent offence, to a fine of not more than \$100,000 or imprisonment for a term of not more than one year, or both.

Penalties for corporations

[33\(5\)](#) A corporation that is guilty of an offence under this Act is liable on summary conviction,

- (a) for a first offence, to a fine of not more than \$500,000; and
- (b) for each subsequent offence, to a fine of not more than \$1,000,000.

Limitation period

[33\(6\)](#) A prosecution for an offence under this Act may not be commenced later than one year after the day on which evidence sufficient to justify a prosecution for the offence came to the knowledge of an officer; and the certificate of an officer as to the day on which the evidence came to his or her knowledge is evidence of that date.

Certificate of analyst admissible

[34\(1\)](#) A certificate appearing to be signed by an analyst — or a copy or extract of the certificate certified by the analyst as a true copy or extract — stating that the analyst has analyzed a sample of water or other substance, and giving the results, is admissible in evidence in any proceeding as proof of the facts stated, unless the contrary is shown. Proof of the analyst's appointment or signature is not required.

Serving certificate on other parties

[34\(2\)](#) A party intending to produce a certificate in a proceeding must give notice of that intention and a copy of the certificate to each other party at least seven days before the date fixed for the hearing.

REPORTING VIOLATIONS

Persons may report suspected violation

[35\(1\)](#) Any person who reasonably believes that a violation of this Act has occurred, or may occur, may report the circumstances leading to that belief to an officer.

Protection from liability

[35\(2\)](#) No action or other proceeding may be brought against a person for providing information in good faith under this section.

Adverse employment action prohibited

[35\(3\)](#) No employer shall take adverse employment action against an employee because

that person provided information in good faith under this section.

No interference or harassment

[35\(4\)](#) No person shall interfere with or harass a person who provides information under this section.

GENERAL PROVISIONS

Protection from liability

[36](#) No action or proceeding may be brought against the minister, an officer or any other person acting under the authority of this Act for anything done or not done, or for any neglect

- (a) in the performance or intended performance of a duty under this Act; or
- (b) in the exercise or intended exercise of a power under this Act;

unless the person was acting in bad faith.

Act binds the Crown

[37](#) This Act binds the Crown.

PUBLIC REGISTRY

Public registry

[38](#) The minister must maintain a public registry, which may be in electronic form, containing a copy of each of the following:

- (a) a draft of each proposed regulation or amendment to a regulation under this Act;
- (b) every declaration, order or regulation made under section 11 (serious water shortages);
- (c) every order respecting a commercial or agricultural operation made under a regulation described in section 40;
- (d) each watershed management plan approved by the minister under Part 3;
- (e) such other information as the minister may from time to time direct.

REGULATIONS

Regulations

[39\(1\)](#) The Lieutenant Governor in Council may make regulations

- (a) designating as an invasive species any non-indigenous organism that places or may place an aquatic ecosystem at risk of harm if it is introduced into or otherwise enters that ecosystem;
- (b) governing, regulating or prohibiting the discharge or other release of a pollutant into water;
- (c) respecting the siting, construction or operation of onsite wastewater management systems;
- (d) governing, regulating or prohibiting the access of livestock to water bodies or areas adjacent to water bodies;
- (e) respecting the providing of notice of an approval of, or amendment to, a watershed management plan under section 21;
- (f) respecting the review of an approved watershed management plan under section 22;

-
- (g) specifying advisory boards and other entities that perform functions relating to water for the purpose of the water council's coordinating role under clause 25(d);
 - (h) prescribing water management principles that are consistent with the purposes of this Act;
 - (i) respecting the establishment of programs to provide financial incentives to protect or enhance water, aquatic ecosystems or drinking water sources;
 - (j) respecting the manner in which the director must obtain expert advice for the purpose of section 7;
 - (k) defining any word or phrase used but not defined in this Act;
 - (l) respecting any other matter that the Lieutenant Governor in Council considers necessary or advisable to carry out the purposes of this Act.

Regulation may apply to all or any part of province

[39\(2\)](#) A regulation made under this Act may apply to the whole province or part of it, and may apply to one or more water bodies.

Public consultation in regulation development

[39\(3\)](#) Except in circumstances that the minister considers to be of an emergency nature, in the formation or substantive review of regulations made under Part 2 other than section 11, or under any of clauses 39(1)(a) to (d), the minister must provide an opportunity for public consultation regarding the proposed regulation or amendment.

Transitional orders re existing operations

[40\(1\)](#) A regulation made under Part 2 other than section 11, or under any of clauses 39(1)(a) to (d), may provide that an owner or operator of a commercial or agricultural operation affected by the regulation may apply to a director for an order

- (a) specifying a transitional plan by which the applicant may, over a specified period, come into compliance with the regulation; and
- (b) exempting the applicant from the application of all or part of the regulation for that period, or any part of it.

Requirements of regulation

[40\(2\)](#) Where a regulation provides the right to apply for an order as described in subsection (1), the regulation must also provide

- (a) that a director may issue an order only if he or she is satisfied that
 - (i) the applicant will suffer serious economic hardship unless an order is issued, and
 - (ii) issuing an order will not result in activities that
 - (A) present or may present an unacceptable risk of significant harm to water or an aquatic ecosystem, or
 - (B) place a drinking water source or public health at risk;
- (b) that an order may be subject to terms and conditions;
- (c) a process for appealing, to the minister,
 - (i) a director's decision whether to issue an order; and
 - (ii) a provision, term or condition of an order; and

(d) a process for varying an order, on the application of the government or the person subject to the order, if there has been a change in circumstances.

PART 5

AMENDMENTS TO OTHER ACTS

42 and 43

NOTE: These sections contained consequential amendments to other Acts that are now included in those Acts.

PART 6

CONSEQUENTIAL AMENDMENTS, REPEAL AND COMING INTO FORCE

44 to 46

NOTE: These sections contained consequential amendments to other Acts that are now included in those Acts.

C.C.S.M. reference

47 This Act may be referred to as Chapter W65 of the *Continuing Consolidation of the Statutes of Manitoba*.

Coming into force

48 This Act comes into force on a day to be fixed by proclamation.

Appendix II

OECD GUIDING PRINCIPLES FOR REGULATORY QUALITY AND PERFORMANCE

The goal of regulatory reform is to improve national economies and enhance their ability to adapt to change. Better regulation and structural reforms are necessary complements to sound fiscal and macroeconomic policies. Continual and far-reaching social, economic and technological changes require governments to consider the cumulative and inter-related impacts of regulatory regimes, to ensure that their regulatory structures and processes are relevant and robust, transparent, accountable and forward-looking. Regulatory reform is not a one-off effort but a dynamic, long-term, multi-disciplinary process.

From 1997 to 2005: The Evolution of Regulatory Policy

The first set of OECD policy recommendations for regulatory reform was endorsed by Ministers in 1997. They have provided guidance to member countries to improve regulatory policies and tools, strengthen market openness and competition, and reduce regulatory burdens. The country reviews of regulatory reform launched in 1998 and the monitoring exercises of implementation launched in 2004 document the considerable progress that has been made and identify lessons about implementation to promote a strong competition culture and liberalization of entry barriers, the use of regulatory impact analysis and consideration of alternatives to regulation, and the integration of market openness criteria in regulatory processes.

The concept of regulatory reform has changed over the last decade, a change that is reflected in the title for these principles. The focus in the 1990s was on steps to reduce the scale of government, often carried out in single initiatives. Isolated efforts cannot take the place of a coherent, whole-of-government approach to create a regulatory environment favourable to the creation and growth of firms, productivity gains, competition, investment and international trade. Removing unneeded regulations, notably in sectors that meet public needs, is still important, but does not tell the whole story. When governments turn elsewhere for provision of services, regulation is necessary to shape market conditions and meet the public interest. “Regulatory quality and performance” captures the dynamic, ongoing whole-of-government approach to implementation.

The 1997 *Recommendations* have stood the test of time. Based on the lessons of experience drawn from 20 country reviews and other studies, these recommendations have been carefully examined and updated to help countries face the challenges of the 21st century with a renewed commitment toward better regulation. The original 7 principles have been retained, but the explanatory notes and subordinate recommendations have been expanded. Issues which receive greater attention in 2005 than in 1997 include: policy coherence and multi-level co-ordination; *ex ante* assessment of proposals for policy; competition policy for network utilities that meet public needs; market openness; risk awareness; and implementation. This agenda calls for a cross-sectoral, proactive approach to make regulations more responsive yet predictable. The *OECD Guidelines for Regulatory Quality and Performance* highlight the dynamic, forward-looking process by which regulatory policies, tools and institutions are adapted for the 21st century.

More non-member countries are taking an interest in regulatory reform issues, as demonstrated by the recent review of Russia, the first of a non-member country, the participation of Brazil and Chile as observers in the Special Group on Regulatory Policy, conferences on regulatory policies in China in 2003 and 2004, the Regulatory Governance Initiative as part of the Investment Compact for South East Europe, and the completion of the *APEC-OECD Integrated Checklist for Regulatory Reform*. Regulatory Reform is a key theme in the Programme on Good Governance for Development in Arab Countries, supported by the OECD and the UNDP. The implementation of policies for better regulation however is difficult in many transition and developing countries, when institutional and democratic systems are still fragile. Bilateral and multilateral development assistance programmes are helping to build capacity for regulatory impact analysis and regulatory policy systems in many countries, where over time, regulatory processes and standards can be expected to improve transparency, accountability and economic outcomes. The 2005 Principles will therefore have an impact beyond OECD member countries, wherever governments strengthen domestic policies and institutions in ways that improve investment and trade.

This set of principles was discussed by the Competition and Trade Committees and the Working Party on Regulatory Management and Reform in the context of stocktaking exercises to identify lessons about implementation drawn out of the 20 country reviews completed through 2003, and summarised in the synthesis report “Taking Stock of Regulatory Reform.”

The Special Group on Regulatory Policy approved the Principles at its 4th meeting on 15 March, 2005, and the Council of the OECD endorsed them on 28 April, 2005.

1. Adopt at the political level broad programmes of regulatory reform that establish clear objectives and frameworks for implementation.

Commit to regulatory reform at the highest political level, recognising that key elements of regulatory policy—policies, institutions and tools—should be considered as a whole, and applied at all levels of government. Articulate reform goals, strategies and benefits clearly to the public.

Establish principles of “good regulation,” drawing on the 1995 OECD *Recommendation on Improving the Quality of Government Regulation*. Good regulation should:

- (i) serve clearly identified policy goals, and be effective in achieving those goals;
- (ii) have a sound legal and empirical basis;
- (iii) produce benefits that justify costs, considering the distribution of effects across society and taking economic, environmental and social effects into account;
- (iv) minimize costs and market distortions;
- (v) promote innovation through market incentives and goal-based approaches;
- (vi) be clear, simple, and practical for users;
- (vii) be consistent with other regulations and policies; and
- (viii) be compatible as far as possible with competition, trade and investment-facilitating principles at domestic and international levels.

Create effective and credible co-ordination mechanisms, foster coherence across major policy objectives, clarify responsibilities for assuring regulatory quality, and ensure capacity to respond to a changing, fast-paced environment. Ensure that institutional frameworks and resources are adequate, and that systems are in place to manage regulatory resources effectively and to discharge enforcement responsibilities. Strengthen quality regulation by staffing regulatory units adequately, conducting regular training sessions, and making effective use of consultation, including advisory bodies of stakeholders.

Encourage better regulation at all levels of government, improve co-ordination and avoid overlapping responsibilities among regulatory authorities and levels of government; apply regulatory quality criteria such as transparency, non-discrimination and efficiency to regulation inside government, and encourage private bodies such as standards-setting organizations to adopt criteria for regulatory quality based on the *OECD Recommendations*.

Adopt a dynamic approach to improve regulatory systems over time to improve the stock of existing and the quality of new regulations, and ensure that reforms are carried out in a logical order and that related markets are liberalized together, where practicable. Make effective use of *ex post* evaluation.

2. Assess impacts and review regulations systematically to ensure that they meet their intended objectives efficiently and effectively in a changing and complex economic and social environment.

Review regulations (economic, social, and administrative) against the principles of good regulation and from the point of view of those affected rather than of the regulator; update regulations through automatic review procedures such as sunseting.

Consider alternatives to regulation where appropriate and possible, including self-regulation, that give greater scope to citizens and firms; when analyzing such alternatives, consideration must take account of their costs, benefits, distributional effects, impact on competition and market openness, and administrative requirements.

Use performance-based assessments of regulatory tools and institutions, to assess how effective they are in contributing to good regulation and economic performance, and to assess their cost-effectiveness.

Target reviews of regulations where change will yield the highest and most visible benefits, particularly regulations restricting competition and market openness, and affecting enterprises, including SMEs.

Review proposals for new regulations, as well as existing regulations, with reference to regulatory quality, competition and market openness; ensure compliance with quality standards when drafting or reviewing regulations preferably overseen by a body created for that purpose.

Integrate regulatory impact analysis into the development, review, and revision of significant regulations, and use RIA to assess impacts on market openness and competition objectives; support RIA with training programmes, and with *ex post* evaluation to monitor quality and compliance; include risk assessment and risk management options in RIAs. Ensure that RIA plays a key role in improving the quality of regulation, and is conducted in a timely, clear and transparent manner.

Minimize the aggregate regulatory burden on those affected as an explicit objective to lessen administrative costs for citizens and businesses and as part of a policy stimulating economic efficiency. Measure the aggregate burdens while also taking account of the benefits of regulation.

3. Ensure that regulations, regulatory institutions charged with implementation, and regulatory processes are transparent and non-discriminatory.

Establish regulatory arrangements that ensure that the public interest is not subordinated to those of regulated entities and stakeholders.

Consult with all significantly affected and potentially interested parties, whether domestic or foreign, where appropriate at the earliest possible stage while developing or reviewing regulations, ensuring that the consultation itself is timely and transparent, and that its scope is clearly understood.

Ensure that firms in an industry are not subject to firm-specific benefits or costs arising from regulation, unless such benefits or costs are demonstrably necessary to benefit the public or to prevent the exercise of market power.

Create and update on a continuing basis public registries of regulations and business formalities, or use other means of ensuring that domestic and foreign businesses can easily identify all requirements applicable to them. Electronically accessible, interactive Web sites should be a priority to make rulemaking information available to the public, and to receive public comment on regulatory matters.

Ensure that administrative procedures for applying regulations and regulatory decisions are transparent, non-discriminatory, contain an appeal process against individual actions, and do not unduly delay business decisions; ensure that efficient appeals procedures are in place.

Ensure that regulatory institutions are accountable and transparent, and include measures to promote integrity.

4. Review and strengthen where necessary the scope, effectiveness and enforcement of competition policy.

Eliminate sectoral gaps in coverage of competition law, unless evidence suggests that compelling public interests cannot be served in better ways. Competition law enforcement and sector regulation to promote competition and trade liberalization should be co-ordinated to ensure consistency.

Enforce competition law vigorously where collusive behaviour, abuse of dominant position, monopolization or anticompetitive mergers risk frustrating reform. Employ effective tools such as leniency programmes to detect and deter hard-core cartel violations. Sanctions imposed against anti-competitive conduct should be sufficient to deter violations; that is, they should be proportionate to the violators' expected gain, the risk of detection and the risk of public harm.

Provide competition authorities with the authority and capacity to advocate reform, and support public awareness of the role and benefits of competition.

5. Design economic regulations in all sectors to stimulate competition and efficiency, and eliminate them except where clear evidence demonstrates that they are the best way to serve broad public interests.

Ensure that regulatory restrictions on competition are limited and proportionate to the public interests they serve.

Periodically review those aspects of economic regulations that restrict entry, access, exit, pricing, output, normal commercial practices, and forms of business organization to ensure that the benefits of the regulation outweigh the costs, and that alternative arrangements cannot equally meet the objectives of the regulation with less effect on competition.

Promote efficiency and the transition to effective competition where economic regulations continue to be needed because of potential for abuse of market power. In particular:

- (i) in appropriate cases such as privatization and the reform of markets that are in the process of opening up to competition, separate potentially competitive activities from

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- regulated utility networks, and otherwise restructure as needed to promote competition;
 - (ii) promote non-discriminatory access to essential network facilities to all market participants on a timely and transparent basis;)
 - (iii) promote inter-connection of networks between geographically neighbouring areas; and
 - (iv) use price regulation mechanisms including price caps and other mechanisms such as price monitoring and disclosure regimes to encourage efficiency gains when price controls are needed.

Promote choice by consumers of the firm with which they deal so that they can switch firms at efficient cost and without undue restrictions.

Periodically review the state ownership stake or financial interest in undertakings with market power and whether they unduly impair competition or impede pro-competitive reforms.

Periodically review the need for universal service obligations, their effectiveness and the need to maintain restrictions on entry and prices.

6. Eliminate unnecessary regulatory barriers to trade and investment through continued liberalization and enhance the consideration and better integration of market openness throughout the regulatory process, thus strengthening economic efficiency and competitiveness.

Better integrate the consideration of market openness principles within the design and implementation of regulations and the conduct of RIAs, taking account of the increasing role of domestic regulatory environments in determining market openness in light of advances in trade and investment liberalization.

Implement, and work with other countries to strengthen international rules and principles to further liberalize trade and investment paying particular attention to transparency, non-discrimination, avoidance of unnecessary trade restrictiveness, harmonization towards international standards, streamlining of conformity assessment procedures and application of competition principles.

Reduce as a priority matter those regulatory barriers to trade and investment arising from divergent and duplicative or outdated requirements by countries.

Support the development and use of internationally harmonized standards as a basis for domestic regulations and their review and improvement in collaboration with other countries, to assure they continue to achieve their intended policy objectives efficiently and effectively.

Elaborate clearly defined criteria for accepting foreign standards, measures and qualifications as equivalent to domestic ones when they pursue the same regulatory objective. Provide transparent and accessible avenues for foreign producers and service suppliers wishing to demonstrate equivalence.

Expand recognition of other countries' conformity assessment procedures and results through,

for example, mutual recognition agreements (MRAs), unilateral recognition of equivalence, promotion of supplier's declaration of conformity or other means. Encourage the development of domestic capacity for accreditation and ensure its ease of access.

7. Identify important linkages with other policy objectives and develop policies to achieve those objectives in ways that support reform.

Apply principles of good regulation when reviewing and adapting policies in areas such as reliability, safety, health, consumer protection, and energy security so that they remain effective, and as efficient as possible within competitive market environments; pursue liberalization when the benefits of competition and market openness are consistent with the achievement of other key policy objectives; broaden the scope for regulatory quality to include public services. Recognize that as policy objectives multiply, the task of designing and evaluating regulations becomes more challenging.

Assess risk to the public and to public policy in a changing environment as fully and transparently as possible, thereby contributing to a better understanding of the responsibilities of all stakeholders.

Review non-regulatory policies, including subsidies (both direct and indirect) and procurement policy, and adjust them where they unnecessarily distort competition and market openness.

Ensure that programs designed to ease the potential costs of regulatory reform are focused and transitional, and facilitate, rather than delay, the process of adjustment.