

The Environmental Management and Protection Act, 2010

Legislative Review

Discussion Paper

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The Environmental Management and Protection Act, 2010

Legislative Review - Discussion Paper

1 Introduction

The Environmental Management and Protection Act, 2010 (the Act) is the overarching legislation that protects Saskatchewan's air, land and water resources by regulating and controlling potentially harmful activities and substances. The Ministry of Environment is leading a legislative review of the Act to identify and address critical gaps within the legislation and provide recommendations.

The Act provides the overarching authority for 15 regulations; therefore, updating the Act may also provide the foundation and starting point to update those regulations, Code chapters and standards. Appendix A lists the regulations under the Act. This legislative review focuses only on the Act; the regulations, Code chapters and standards are outside of this review's scope.

2 Purpose

The legislative review will determine how to improve enforceability and clarity. It will also improve consistency with other provincial legislation and harmonization with other jurisdictions across Canada.

Throughout the legislative review process, the ministry will work with stakeholders and Indigenous communities to achieve an Act:

- 1) with enhanced enforceability by supporting effective compliance and enforcement activities within an effective legislative framework;
- 2) that is consistent with existing provincial legislation;
- 3) that is harmonized, where appropriate, with other provincial and federal legislation;
- 4) that continues to support the management and protection of Saskatchewan's air, land and water and balances growth with sustainable development; and
- 5) that continues to reflect contemporary values and facilitates the results-based regulatory approach.

3 Engagement Process

The review will take place over two years and involve stakeholder and Indigenous engagement, committee hearings and legislative assembly debate. The information gathered will help inform decision-making when updating and refining the Act.

The first engagement phase will take place from June 2023 to April 2024. This discussion paper represents the first step in the engagement process. It provides background information on the Act and outlines the key areas under consideration. Interested parties are invited to review the discussion paper and provide feedback on any aspect of the Act. We will then compile the information received into a summary report to be released in the fall of 2023. Further engagement will take place and will conclude by April 2024.

4 Background

The Environmental Management and Protection Act, 2010 (the Act) addresses the management and protection of the environment. It is the primary legislative framework for environmental protection in

Saskatchewan. The Act was proclaimed in force on June 1, 2015, repealing *The Clean Air Act*, *The Environmental Management and Protection Act, 2002*, *The Litter Control Act* and *The State of the Environment Report Act*.

The Act received minor amendments in 2018. Key changes included clarification of the audit and investigations process and language around public information and waste disposal. The amendments also included the addition of sections regarding product stewardship programs and seizure procedures for particular objects and public information. In early 2021, officials from the Ministry of Environment, the Ministry of Justice and the Water Security Agency raised concerns with enforceability of the Act. As a result, the ministry has initiated a legislative review of the Act that will occur over the next two years-

5 Issues under Consideration

There are three key issues under consideration:

- 1) Language;
- 2) Enforceability and compliance measures; and
- 3) Harmonization with other provincial legislation and regulations.

5.1 Language

Definitions play an important role in legislation. Definitions provide the reader of the legislative text with clear guidance on how words or phrases are to be understood and used within that specific legislation. However, some of the definitions in the Act are too broad, making them open to interpretation. For example, the current definition of “adverse effect” in the legislation; “impairment of or damage to the environment or harm to human health, caused by any chemical, physical or biological alteration or any combination of any chemical, physical or biological alterations.” Impairment and damage can be difficult to ascribe without specific requirements or values, thus making it difficult to administer. By redefining existing definitions and resolving ambiguity in the legislative text, regulators can better enforce the legislation.

Vague language within the Act sometimes requires the government to seek legal opinions on interpreting those sections. As a result, there is a risk that decisions or enforcement actions could be delayed, jeopardizing the government’s ability to manage and protect the environment. Using accurate wording and avoiding ambiguous definitions will improve the interpretation and application of the Act.

There are overlapping definitions within the Act which cause confusion and misinterpretation. For example, the “industrial waste” and “industrial waste works” definitions have resulted in capturing facilities not intended to be captured or permitted as industrial waste works facilities. Based on the current definitions, a storm pond, which was not intended to be considered an industrial waste work facility, would require a permit, whereas the facility itself would not.

Discussion Questions:

Q1: Are there definitions or phrases within Section 2(1) of the Act that you consider too broad or vague that make it difficult for you to interpret other parts of the Act? If yes, what definitions and why?

Q2: Are there words or phrases within the rest of the Act that need to be redefined to improve your understanding and interpretation of the legislation? If yes, what are words and phrases, and why?

5.2 Enforceability and Compliance Measures

There are missing or poorly defined compliance and enforcement provisions within the Act. This includes Saskatchewan's ability to apply administrative penalties for some environmental violations, issue stop work orders and make arrests. Clarifying legislative requirements will help the regulated community better understand their environmental obligations, resulting in improved compliance with the Act.

Lack of enforceability may incentivize non-compliance as there is a financial cost that comes with complying with certain aspects of legislation. If the government cannot enforce those sections, there may be an unfair advantage to operators who choose not to comply. This is unfair to operators striving to practice good environmental stewardship and comply with environmental legislation. Strengthening and increasing penalties for contraventions may encourage more voluntary compliance and remove unintentional economic benefits for those who choose not to comply. While the province is committed to a results-based regulatory framework, strengthening the enforceability of the Act and ensuring that appropriate enforcement tools are available supports the province's goal of safeguarding human health and the environment.

Discussion Questions:

Q1: Are there sections where enforcement measures could be improved or clarified in the Act? If yes, what sections and why?

Q2: What environmental violations are of the greatest concern to you? What activities, in your view, currently lack enforcement and why?

5.3 Harmonization with Other Provincial Legislation and Regulations

Harmonizing provincial legislation creates a clear, predictable and efficient legal environment. Sometimes, inconsistencies between acts mean that obeying one law could violate another. Harmonized legislation reduces such contradictions between varying Acts and the potential for unfair advantages. Sections of the Act have been identified as being inconsistent with the language of other provincial legislation, affecting the province's ability to regulate certain areas under the Act. For example, the Act has no specific section addressing persons who aid and abet in a violation, unlike *The Wildlife Act, 1998*, where those who aid and abet in a violation can be found guilty of an offence and liable to pay penalties if convicted. The Act intends to include those who aid and abet in an offence and adding a direct section would make it clear and consistent with other legislation administered by the ministry.

Discussion Questions:

Q1: Are you aware of any sections in the Act that do not harmonize with other provincial acts and regulations? If yes, please identify those sections and the contradictory legislation.

6 Next Steps

Feedback received during the Indigenous organizations and stakeholder engagement will be summarized and published in a "What We Heard" report and shared with engagement participants in the fall of 2023. The feedback will help inform amendments to the Act. The ministry will host webinars and/or in-person engagement sessions regarding the potential amendments in fall 2023.

7 Feedback

Your views on this Act are important. We welcome your comments by August 25, 2023 via email to empa@gov.sk.ca. When submitting written comments, please use the subject line: **EMPA 2010, Legislative Review.**

Written responses can be directed to:

ATTN: EMPA REVIEW
Environmental Protection Branch
Ministry of Environment
Government of Saskatchewan
2nd Floor, 3211 Albert Street
REGINA, SK S4S 5W6

You can also comment on the legislative process for this review by submitting your comments to the addresses above.

Discussion Questions:

1. Please state your level of agreement or disagreement with the following statements (1-Strongly disagree; 2-Disagree; 3-Neither agree nor disagree; 4-Agree; 5-Strongly agree)
 - a. I was able to share my feedback and concerns effectively:
 - b. I had access to the information I needed to participate:
2. Please share any suggestions that would help you participate in similar opportunities in the future.

APPENDIX A

Regulations under *The Environmental Management and Protection Act, 2010*

- PCB Waste Storage Regulations, E-10.2 Reg 6
- Municipal Refuse Management Regulations, E-10.2 Reg 4
- Mineral Industry Environmental Protection Regulations, 1996, E-10.2 Reg 7
- Litter Control Regulations, 1973, SR 188/73
- Waste Paint Management Regulations, E-10.21 Reg 3
- Hazardous Substances and Waste Dangerous Goods Regulations, E-10.2 Reg 3
- Environmental Management and Protection (General) Regulations, E-10.22 Reg 1
- Environmental Management and Protection (Saskatchewan Environmental Code Adoption) Regulations, E-10.22 Reg 2
- Waterworks and Sewage Works Regulations, E-10.22 Reg 3
- Agricultural Packaging Product Waste Stewardship Regulations, E-10.22 Reg 4
- Scrap Tire Management Regulations, 2017, E-10.22 Reg 5
- Used Petroleum and Antifreeze Products Stewardship Regulations, E-10.22 Reg 7
- Electronic Equipment Stewardship Regulations, E-10.22 Reg 6
- Household Hazardous Waste Products Stewardship Regulations, E-10.22 Reg 8
- Household Packaging and Paper Stewardship Program Regulations, 2023, E-10.22 Reg 9