The Environmental Management and Protection Act, 2010 Legislative Review

What We Heard – Discussion Paper Engagement

December 2023

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Table of Contents

Introduction

The Government of Saskatchewan is undertaking research and engagement to inform the legislative review of *The Environmental Management and Protection Act, 2010* (hereafter referred to only as "the act," even though other acts are named in this document). In June 2023, the Ministry of Environment (ministry) initiated online engagement by releasing a discussion paper describing key areas under consideration. This document summarizes the written feedback received on the discussion paper.

Project Background

The act is the overarching legislation that protects Saskatchewan's air, land and water resources by regulating and controlling potentially harmful activities and substances. It is the primary legislative framework for environmental protection in Saskatchewan.

Since the act came into force on June 1, 2015, gaps have been raised including those around enforceability, clarity of the legislation and harmonization with provincial legislation and other jurisdictions across Canada. The ministry determined these issues were significant enough to warrant a legislative review of the act.

Engagement Process

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

Engagement began when the ministry released a discussion paper on June 30, 2023, that provided background information on the act and outlined the key areas under consideration. This summary report provides an overview of what was heard during this initial engagement.

The ministry invited interested parties to review the discussion paper and provide feedback on any aspect of the act. The ministry accepted written responses throughout the initial engagement period until August 25, 2023. Results from this initial engagement phase will inform legislative amendments to the act, keeping Indigenous communities and respondent engagement as a key tenet of legislation development.

Participants

One hundred forty-seven stakeholders were invited to provide feedback on the discussion paper, including Indigenous communities and organizations, provincial government, government agencies, municipalities, industry, industry associations and environment not-for-profit organizations that legislative changes to the act may impact. Figure 1 shows the proportion of Indigenous organizations and stakeholders contacted to provide feedback on the discussion paper. There was a participation rate of 7.5 per cent.

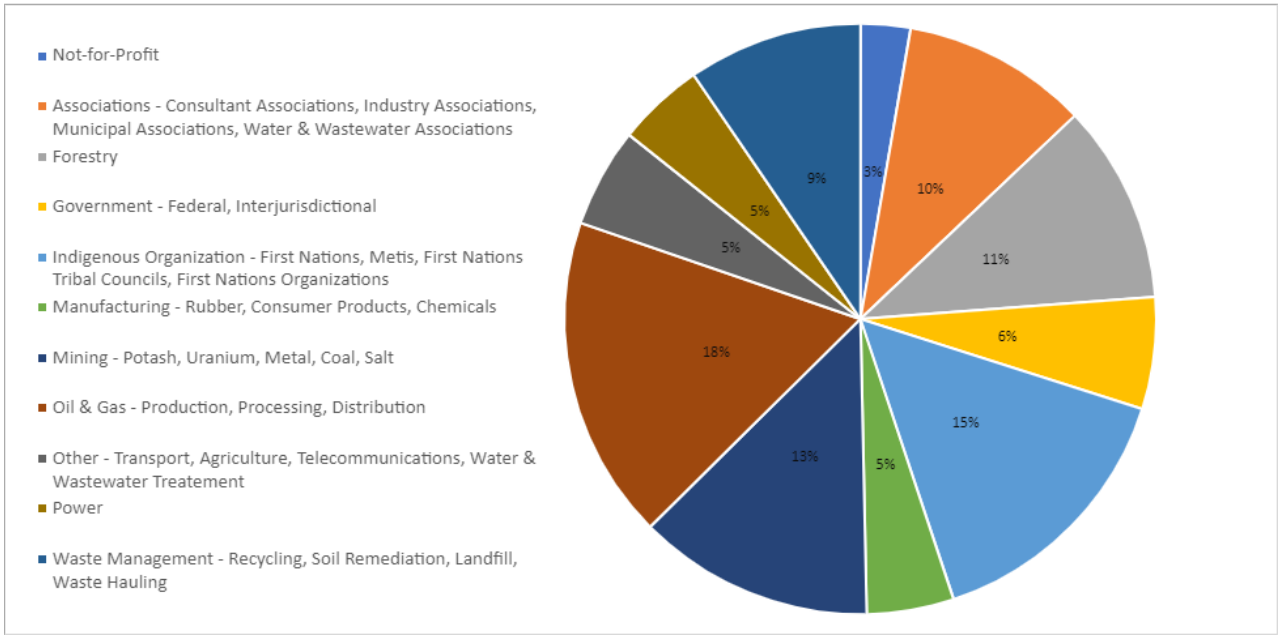

Figure 1 Breakdown by sector of the 147 stakeholders and Indigenous communities contacted to provide feedback.

In total, 11 organizations provided written feedback on the discussion paper. Figure 2 shows the sectors that provided feedback on the discussion paper.

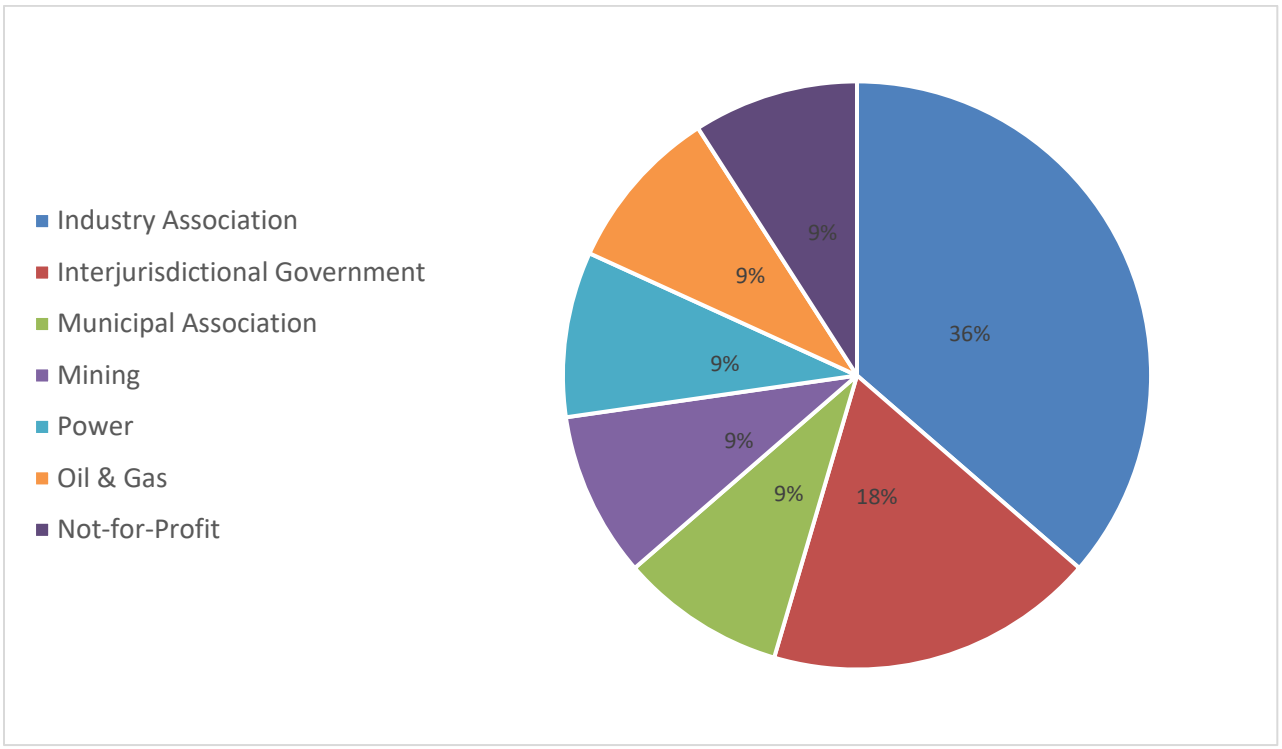

Figure 2 Breakdown by sector of the 11 respondents that provided feedback.

What We Heard

This section is organized by the three main categories reported in the discussion paper:

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

Respondents were primarily concerned with missing or ambiguous definitions that respondents found confusing or led them to misinterpret language in the act. Figure 3 shows the distribution of issues identified by respondents. Some feedback items could not be explicitly assigned to one of the key issues. As a result, those comments are addressed under the last section, "Others."

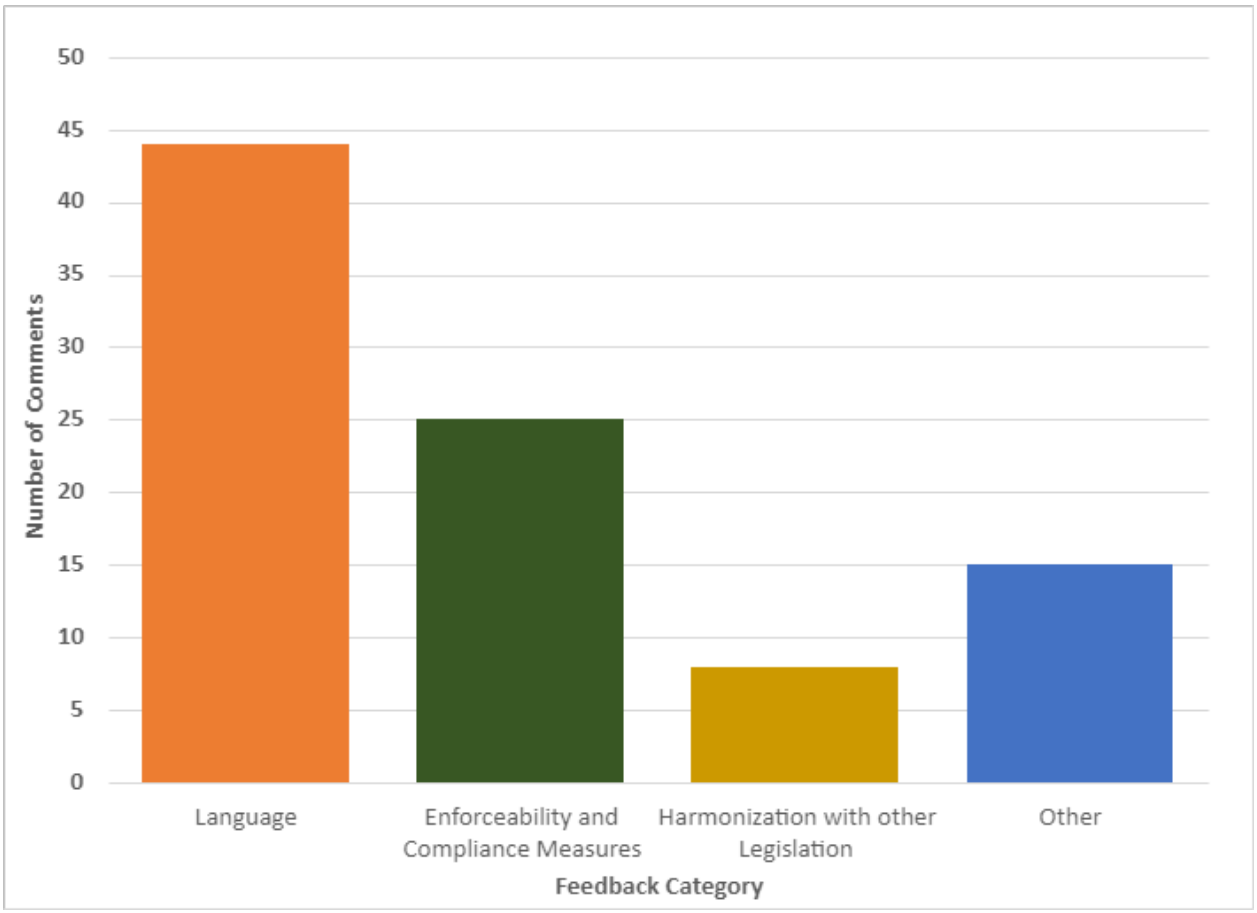

Figure 3 Breakdown of responses by issue of concern.

This legislative review focuses only on the act. The regulations, Saskatchewan Environmental Code (code) chapters and standards are outside of this review's scope. However, the summary below includes issues identified by respondents directly related to the act and those outside the act. Only those issues determined to be directly related to the act will be considered in this legislative review. However, the ministry will maintain a record of those issues outside this review's scope as the ministry updates the regulations, code chapters and standards in the future.

This document only represents the feedback the ministry has received so far in the review process. This feedback will undergo assessment and review to determine the feasibility of implementing these changes.

Language

The issues raised by respondents can be categorized under two distinct themes: “no definition” and “ambiguous definition.” Respondents noted that there were terms used in the act that required definition; these included “wetlands,” “drinking water,” “municipality” and “emergency work.” By providing clear and consistent definitions to industry, operators can fulfill their legislative requirements more easily.

Multiple respondents asked for better definitions of words such as “adverse effects,” “hazardous substance,” “waste dangerous good” and “hazardous waste.” According to the respondents, broad, vague or ambiguous definitions, such as the definition for “adverse effect,” could lead to grey areas, which can cause an administrative burden on industry as well as confusion and disagreements between affected parties. In addition, broad definitions also fail to include essential elements. For example, according to one respondent, the general definitions “groundwater” and “surface water” do not account for all wetland habitats.

Not all respondents consider broad definitions to be an issue. One respondent indicated that definitions in the act should be kept broad to allow for greater flexibility for interpretation and enforcement.

Respondents are also seeking clarification concerning any code mentioned in the act. According to many respondents, “code” is ambiguous as it is defined as a “code adopted by the Lieutenant Governor in Council in the regulations.” Respondents would like to see the act specifically reference the Saskatchewan Environmental Code, as it would make interpreting the regulatory framework less confusing. In addition, respondents asked for more context around why some definitions such as “hazardous waste” may be prescribed or set out in the code (i.e. why or how the substance is or becomes “hazardous” or “dangerous”).

Subsection 3(2)(g)(ii) gives the ministry the power to provide the public with information on “things” in the environment. A respondent pointed out that “things” can provide room for a wide range of interpretations. This could include facilities, lands, operations and activities not regulated by the ministry and information not otherwise subject to disclosure made available to the public.

One respondent also seeks to add “managing and conserving the quality of the natural environment and providing the opportunity for all residents to influence over” to the Minister of Environment’s (Minister) responsibilities in section 3(1).

Respondents are seeking a more precise definition of “persons responsible.” Section 12 defines “persons responsible” as “every person who caused or contributed to the discharge or the presence of the substance”. Respondents are concerned that the current language of the Persons Responsible division could mean that the lawful purchase of a substance (e.g. gasoline) in a container could make a purchaser “responsible” and the site “impacted.”

A respondent noted that environmental remediation plans are not included. They would like to see these plans addressed in the act.

Respondents who provided feedback about Part VII: Air Quality were most concerned with missing or inadequate definitions relating to that division. One respondent pointed out that the definition of “ambient air”, when used in combination with Table 20 of the Saskatchewan Ambient Air Quality Standards, implies the standard can be applied at any distance from a potential outdoor source (e.g. emissions) and does not account for controls in place, regulatory criteria, permit condition or risk-based decision making. This can lead to confusion on when the ambient air quality standards apply. The same respondent also pointed out that “odour” is not addressed in the act or the code.

While “geological sequestration” and “transportation” are referenced in section 52 (greenhouse gases). The respondent pointed out that there are no definitions for these terms provided in the act.

Respondents identified an issue regarding the permit holder being required to be a “person” rather than an “organization,” especially when the Minister can apply penalties for false statements in section 73. This creates challenges for large projects where there can be different project managers depending on what phase of the work they are in. For example, a design project manager may obtain the permit, but the construction project manager executes and enforces it.

One respondent reported section 84(1)(d) “fail to comply with any provision of this act, the regulations or the code” is extremely vague. According to the respondent, removing imprecise language such as this example would reduce ambiguity and burden for industry.

Feedback from respondents highlights a concern regarding the organization of the act when it comes to where definitions are provided. For example, one respondent pointed out that most definitions can be found in section 2(1) of the act. In contrast, others are provided later under the divisions, such as Part V: Protection of Water and Part VII: Air Quality. Respondents noted that this disjointed approach to definitions causes confusion.

Enforceability and Compliance Measures

One respondent highlighted the need to include dispute resolution in the act, like Manitoba’s *Environment Act*. This would allow the Minister to appoint an environmental mediator acceptable to the parties to mediate between persons involved in an environmental dispute.

For section 9, “duty to report”, a respondent suggested whoever discovers contamination is to report it but give landowners the first opportunity to inform. While the respondent thought it would contribute to better public trust between government officials and landowners, they also recognized that doing this could delay reporting to the ministry.

Section 16(1) requires corrective action plans (CAPs) to be reviewed by the Minister. However, one respondent suggested this requirement does not match the intent of results-based regulations when it comes to acceptable and alternative solutions. They suggest CAPs already following the acceptable solution should not require a review by the Minister since they are already deemed “acceptable.” Only those CAPs using an alternative solution should be reviewed.

Several respondents identified the requirements for financial assurances and short submission time for CAPs as issues (section 17). Respondents indicated that the requirements for financial assurances are financially burdensome, thus discouraging investment in the province. Several respondents were concerned that the requirement for financial assurances contradicts the ministry’s results-based regulatory framework, which promotes risk-based management approaches. They said the requirement to establish financial assurances could hinder the implementation of risk-based approaches. In addition, respondents have suggested that the ministry should consider other avenues of financial assurances for environmentally responsible and financially secure organizations.

The act requires CAPs to be prepared within six months after completing the site assessment or any other period set by the Minister. Respondents noted it is unclear when this timeline starts. This gives way to misinterpretation given that environmental assessments can take longer than six months to complete. Furthermore, respondents put forward that the timetable does not consider project-specific situations given that different projects have different needs.

One respondent was concerned that the requirement to accept an established CAP and financial assurance before the transfer of responsibility for an impacted site under section 19(1) may present an unintended barrier to brownfield development and redevelopment.

Table 1 (section 24) in the act identifies what activities require permits; however, this list only identifies waterworks and sewage works activities. Respondents suggested that Table 1 needs to be expanded to include all permit types required under the act. By expanding Table 1, there would be less confusion as to what requires a permit. To further reduce confusion, respondents want Table 1 to be extended to specify what permits may not be exempted under subsection 26(2). Respondents recommended moving Table 1 to an external document to be updated regularly by the ministry as permit names and activities requiring permits change.

One gap identified by respondents is the lack of fines for littering, even though littering is explicitly prohibited as per section 50 of the act. The proponent suggests adding a fine provision for littering to section 50 to eliminate ambiguity around assigning penalties in section 84 (Offences).

One respondent indicated that current legislation prohibits parties from entering compliance agreements to remedy an offence. They offered the example of British Columbia's *Environmental Management Act* as a model of compliance agreements. In British Columbia, the director may, subject to the regulations, enter into an agreement with the person liable for the penalty allowing the director to reduce or cancel administrative penalties. Currently, there is no such provision in section 88 of the act.

A respondent is unclear regarding air quality regulation in the act given that the federal government also regulates air quality through the Canadian Ambient Air Quality Standards. Respondents must report air quality information to multiple departments and agencies thus creating unnecessary administrative burdens for their organization. Another respondent would like a well-defined and consistent standard of response and investigation of public complaints about hydrocarbon odour by air quality regulators.

A respondent noted that in some cases it would be more effective to shift responsibility to an offending contractor and enforce compliance against them rather than the owner where the owner has proven due diligence. According to this respondent, the ministry and the Water Security Agency (WSA) have been very amenable to this type of enforcement in recent years.

Multiple respondents seek a balance between enforcement measures and the ability to challenge those enforcement measures. If enforcement measures, such as administrative penalties, stop work orders and arrests are expanded, then the availability of an appeal process should also be expanded. One respondent said they do not support enforcement measures to punish responsive and environmentally responsible operators in managing legacy and emergent matters.

Two respondents raised concerns about using the word "may" as it does not have a firm application of boundary or meaning. Respondents said this creates uncertainty for industry and can lead them to over-report or carry out unnecessary assessments to remain compliant. Respondents seek a publicly available operational policy that outlines how and when the ministry would apply discretion in the act. Respondents argue that legislative requirements will improve by having a publicly available operational policy. While this is only one example, respondents reported similar issues with using "may" in other divisions.

Harmonization with Other Provincial Legislation and Regulations

A consistent theme from respondents was that the ministry needs to ensure that definitions in the act harmonize with other provincial legislation. For example, the ministry and the WSA define "water" differently. In the act, "water" includes groundwater, surface water and drinking water, while in the WSA definition, "drinking water" is left out.

Respondents were concerned with overlapping definitions in the act and other provincial legislation. According to respondents, these overlapping definitions create confusion. For example, while the act provides functional definitions for "bed," "bank" and "boundary," respondents say these definitions in the act do not align with definitions in *The Land Surveys Regulations*. The act defines "bank" as "the rising ground bordering a water body or watercourse that serves to confine the water to the channel or bed." In contrast, *The Land Surveys Regulations* define "bank" as "with respect to a body of water, the line where the bed of the body of water ceases."

One respondent suggested adding agricultural water management to the act. Currently, agricultural water management is administered through the WSA, which has its own policies and regulations. Harmonizing the act with WSA policy could improve the enforcement of harmful acts to water quality, habitat loss and downstream flooding caused by unauthorized drainage works in the prairie region of Saskatchewan.

The same respondent is concerned with the lack of enforcement provisions around unauthorized wetland drainage that can impact downstream landowners through increased flooding risk, removing habitat and degrading water quality. They state that the loss of wetlands can have cumulative impacts through the loss of revenue from recreational activities like fishing, hunting and bird watching to increased water treatment costs for urban and rural municipalities due to increased nutrient loading in water treatment plants.

A similar issue is conflicting terms such as "water treatment works" and "permit holder" in the act versus "water treatment facility" and "permittee" in The Waterworks and Sewage Works Regulations. Respondents find that inconsistencies such as these make interpretation of the act and provincial legislation and regulations confusing and burdensome.

A respondent is unclear on how Part VII: Air Quality interacts with *The Management and Reduction of Greenhouse Gases Act*. More specifically, it is reportedly unclear if the authority for carbon capture, utilization and sequestration falls to the act or *The Management and Reduction of Greenhouse Gases Act*.

While not specific to any division of the act, a recurring comment from respondents is that the act needs to better harmonize with other legislation and regulations, both provincial and federal. While not an issue specific to the act, two respondents pointed out that the code's Discharge and Discovery Reporting chapter is misaligned with legislation in other provinces, causing an administrative burden on industries. Respondents also asked that the act be better harmonized with *The Water Security Agency Act* (WSAA). As pointed out earlier in this report, there are inconsistencies in interpretation and language between the act and the WSA for the same type of work. Furthermore, respondents are also asking for better harmonization with federal regulators such as the Impact Assessment Agency of Canada, and Fisheries and Oceans Canada.

Other

Caution with Making Changes

While respondents generally supported the legislative review meant to reduce uncertainty and ambiguity in the act, they cautioned the ministry to carefully consider any potential changes that could affect industry.

One respondent said they supported updating the act that continued to incorporate the required outcomes into results-based regulations and left the specific methods to achieve that outcome up to the proponent. They requested further engagement before any changes are finalized to ensure no unintended consequences to regulations under the act, code chapters, standards and guidelines. The ministry was also encouraged to be mindful of changes that could lead to conflicting obligations, which could result in confusion for industry. Respondents urged the ministry to ensure any changes or adjustments to the act align with existing acts and regulations to ensure legislation implementation and execution remains successful.

Purpose Statement

One respondent recommended adding a purpose statement to the beginning of the act. This purpose statement would solidify the intents and goals of the act.

State of the Environment Reporting

One respondent proposed the act include specific indicators, such as the status of wetlands, in the reporting requirements for the State of the Environment Report in section 5 of the act. In addition, section 7 allows the Minister to submit a report on the state of provincial forests in place of the State of the Environment Report. Respondents are concerned with allowing this substitution because the report on the state of provincial forests potentially misses key components required in the State of the Environment Report. They recommend expanding provisions in the report on the state of provincial forests to make it more consistent with the State of the Environment Report.

Environmentally Impacted Sites Registry

Section 22 requires that the ministry establish a publicly accessible environmentally impacted sites registry that includes notice of site condition, corrective action plans, site assessments, environmental protection orders and any other prescribed documents or prescribed classes of documents. However, respondents pointed out that there is no single source for registry information. While site locations are visible on a public web portal, other information, such as corrective action plans, site assessments, etc., are only available through an access to information request. According to the respondent, not readily providing other information as prescribed in the act constitutes a misalignment with what the ministry or industry is doing in practice. Respondents are proposing a central source to find this information.

Protections for Volunteers

Section 92 provides protections from liability for volunteers who render aid or assistance to the Minister to address an orphaned environmentally impacted site. According to respondents, they considered these general provisions in Part XI applied to all preceding divisions, but if these provisions are not meant to extend to volunteers assisting in other capacities, protections for volunteers assisting with impacted sites should be moved to those sections addressing environmentally impacted sites only.

Wetlands and Aquatic Habitat Protection Permitting

Respondents pointed out that provisions around “wetlands” are absent from the act. They are looking for the act to adopt the five Major Wetland Classes (i.e. bog, fen, swamp, marsh, shallow open water) as defined by the Canadian Wetland Classification System. This system is widely accepted by industry, environmental management consultants, academia and land managers. In addition, one respondent proposed the act include the status of wetlands in the reporting requirements for the State of the Environment Report in section 5 of the act.

One respondent suggested Aquatic Habitat Protection Permits could be better addressed in the act by speaking to wetlands and clearly linking them to related regulations.

Additionally, they suggested including the aquatic habitat protection permit process in the prairie ecozone on agricultural lands to align all wetland policies under one regulatory body.

Education Initiatives
One respondent would like the ministry to consider adding a section on educational initiatives for residents, like section 27 of Nova Scotia's *Environment Act,* for the purpose of fostering an understanding of and responsibility for the environment.

Unfair Regulation
While this is an issue outside the act, one respondent pointed out that the potash industry is the only industrial activity with an emission limit in Table 21 of the Saskatchewan Emission Limit Standard. They assert that this targeted regulation of only one industry is unfair given that many substances with adverse impacts on the environment are not regulated in such a way.

Moving Forward

The ministry would like to thank everyone who participated in this initial engagement and provided input into the legislative review of the act. Your input is valuable, and the ministry will continue to consider your input as we revise the act.

The ministry will continue to engage and seek feedback from Indigenous organizations and stakeholders throughout this process. Further discussion about the proposed changes will occur in 2024, when you can continue to provide input to this review. Comments on this summary of what we heard or any comments on the overall legislative review can be submitted via email to: empa@gov.sk.ca, using the subject line **EMPA 2010 Legislative Review**. The ministry is committed to providing a robust and flexible regulatory system for environmental management and protection.

Written responses can be directed to:

ATTN: EMPA 2010 Legislative 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 review process 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.