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The future of environmental regulation: Saskatchewan's move to results-based regulation

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ABSTRACT The Saskatchewan Ministry of Environment recognizes the importance of environmental protection as an important contributor to Saskatchewan's economy, with the environmental performance of industry closely monitored. Unfortunately, environmental regulation is often accompanied by significant process that does not always add value to environmental protection activities. The Saskatchewan Ministry of Environment has embarked on a visionary restructuring of its regulatory framework from conventional command and control regulation to a results-based regulatory framework. This new regulatory framework will provide for establishing clear environmental protection and resource management objectives; streamlining the environmental acts and regulations; developing an environmental code of practice; relying on qualified persons; enhancing compliance and enforcement tools; eliminating of many permits; and developing greater certainty in environmental assessment decisions. Results-based regulation promises to deliver enhanced environmental protection with less process. The uranium industry in Saskatchewan will be used as an example of the potential effects of results-based regulation.

■ **KEYWORDS** Results-based regulation, Environmental code, Qualified persons, Uranium

RÉSUMÉ Le ministère de l'Environnement de la Saskatchewan reconnaît l'importance de protéger l'environnement car il est un contributeur important à l'économie de cette province, tout en suivant de près la performance environnementale de l'industrie. Malheureusement, la réglementation environnementale est souvent accompagnée d'importantes procédures qui n'ajoutent pas toujours de la valeur aux activités de protection de l'environnement. Le ministère de l'Environnement de la Saskatchewan se lance dans une restructuration visionnaire de son cadre réglementaire depuis une réglementation de commandement et de contrôle à un cadre de réglementation basée sur les résultats. Ce nouveau cadre réglementaire permettra l'établissement d'objectifs de protection environnementale et de gestion des ressources; la rationalisation des lois et des réglementations environnementales; le développement d'un code de pratique environnementale; la confiance en les personnes qualifiées; la mise à jour des outils de conformité et de mise en œuvre; l'élimination de nombreux permis et le développement d'une plus grande certitude dans les décisions d'évaluation environnementale. La réglementation basée sur les résultats promet de livrer une meilleure protection de l'environnement avec moins de procédures. L'industrie de l'uranium en Saskatchewan servira d'exemple pour montrer les effets potentiels de la réglementation basée sur les résultats.

■ **MOTS CLÉS** réglementation basée sur les résultats, code de réglementation environnementale, personnes qualifiées, uranium

INTRODUCTION

In 1930, *The British North America Act* was amended to transfer resources to the provinces and the Saskatchewan Department of Natural Resources (DNR) was formed to manage those resources. As concern for and awareness of the importance of environmental matters grew, the Department of the Environment was formed in 1972 and was amalgamated with DNR in 1993. This new department assumed responsibility for the protection of all forest, wildlife, land, air, and water resources. In response to resource development pressures in the

province, particularly in oil, potash, coal, and uranium, the Environmental Impact Assessment Branch was formed in 1975 with the *Saskatchewan Environmental Assessment Act* (SEAA) being passed in 1979. The *Environmental Management and Protection Act* (EMPA), which forms the foundation of environmental regulation for the province, was passed in 1984 and substantially revised and rewritten in 2002. Prior to that time, *The Water Resources Management Act* was the province's legislation associated with water-related environmental management.

The initial focus of EMPA was on compliance and that continues to the present.

During the last few years, industry has delivered a message to government that, in the broadest sense, the environmental assessment and approvals process was unnecessarily standing in the way of development. The common view was that the application of law was inconsistent and timelines were not predictable, which resulted in a poor climate for investment in the province. The Saskatchewan government listened and realized that perception is reality, regardless of the evidence to the contrary, and industry's perception was potentially damaging to investment.

In many respects, the existing regulatory regime was an outcome of the environmental legislation movements in the 1970s and early 1980s, when many environmental assessment and regulatory regimes were put in place (e.g., SEAA and EMPA in Saskatchewan). These early regulatory frameworks tended to rely on the expertise of experienced public servants to ensure proper application of the law and protect the public interest. In general, environmental understanding and the integration of science to back it up were developmental, and the uncertainties this engendered were often reflected in legislation that was rich in process.

As these frameworks evolved, regulations became more common, more prescribed and, arguably, the regulatory framework developed into a command and control structure. In parallel, government environment departments grew, as did the effort being placed on understanding the environment and the potential effects of a wide variety of activities. Outcomes of this phase of regulation included

- environmental management systems (including International Standards Organization [ISO] systems);
- licenses with enhanced monitoring requirements;
- improved environmental risk models as applied to environmental assessments; and
- strong regulations around hazardous materials handling and transport and emergency response.

Furthermore, the pace of technological change began to outpace the ability of regulators to remain abreast of the use and effects of the technology. In addition, the expectations of public consultation and clarifications regarding the legal duty to consult with First Nations and Métis grew from *ad hoc* approaches to integral parts of the framework. These increases in regulation and process occurred at both the federal and provincial levels.

For the most part, the growth in environmental regulation was neither linear nor strategic; rather, it was organic and grew reactively as need or understanding developed, adding complexity to the regulatory framework. As a result, both the regulator and the regulated had to grow their environmental capacity to meet the demands of the system. Yet, for all of the additional regulation and process, the authors would argue that there has been little improvement in the overall protection of the environment because much of the effort is tied up in regulating low-risk activities and in meeting process

requirements. The level of complexity and effort required for government to regulate, and industry to comply with, all environmental activities is substantial and in the long term, is simply not sustainable.

It is the role of the Saskatchewan Ministry of Environment (the Ministry) to protect the environment and promote the sustainable use of natural resources to enhance economic and social benefits. The current regulatory structure stretches the resources of the Ministry to provide both effective regulation and strategy. The combination of increased workload, loss of skills and experience (largely through retirement), and increasingly inadequate information management systems has led to delays in permitting and approvals despite the efforts of the Ministry's staff. An internal 2005 provincial study estimated the revenue losses to the provincial government from missed opportunity due to regulatory delays to be at least \$12 million annually. Presumably, the losses to investors and the broader economy would be much larger. Moving forward, by extrapolating the estimated \$15 billion that Enterprise Saskatchewan estimates will be spent on capital projects in 2011 (Enterprise Saskatchewan, 2010), more than \$100 billion could be invested over the next 10 to 15 years. A portion of that investment—possibly a significant portion—is at risk under the current regulatory model. Action, including an updated regulatory model, is required to mitigate delays and facilitate investment while maintaining, and preferably enhancing, the current level of environmental protection.

In 2008, Clifton Associates Ltd. of Regina, Saskatchewan contracted with the Ministry to review the existing regulatory model and provide recommendations for a new environmental management model. They were tasked to thoroughly review Saskatchewan's environmental legislation (in conjunction with the Ministry of Justice and Attorney General); benchmark the legislation against models in Alberta, BC, Manitoba, and Ontario; and within a robust consultation process, develop recommendations for a new regulatory model.

To date, there have been three formal rounds of consultation on the regulatory model and two rounds for components of the model (the environmental code and qualified persons), with more than 120 stakeholder organizations, communities, businesses, and industries having been consulted as well as some members of the general public. In addition, the Ministry is working with First Nations and Métis (FN & M) groups to satisfy the government's duty to consult on the proposed regulatory changes, and to incorporate FN & M views into the model. The province incorporated most of the final recommendations of the consultant in its transitional plan and in 2009 initiated the regulatory changes necessary to enable the move to a results-based regulation (RBR) framework (Clifton Associates Limited, 2009). The key components of that change are legislative and regulatory amendments; enhancements to information technology; and organizational reform (for

more information on RBR, the Code and the Saskatchewan Ministry of Environment, please go to Saskatchewan Ministry of Environment [2010]).

Results-based regulation focuses on producing the desired environmental performance, not on producing more rules. The regulator specifies the desired environmental outcomes, but it is largely up to industry (public and private) to decide how to achieve those outcomes. Results-based regulation strives to clarify the role of regulator as the standards setter and the enforcer of compliance so the Ministry can assure the public that compliance is being achieved. In this model, the regulated community is more clearly accountable for compliance with the acts and codes, and for achieving the environmental outcomes. Results-based regulation leverages the current state of environmental science and regulation and recognizes that the regulator, the proponent, and the public have become more sophisticated and knowledgeable. The core principles that govern a results-based system include

- materiality: All material changes in the environment in the zone of impact of an enterprise will be reportable by the operator;
- transparency: Environmental reporting, except commercially sensitive information or trade secrets, will be accessible for review by the public, including non-governmental and research organizations;
- accountability: The operator of an enterprise will be solely responsible for protection of the environment from the impacts resulting from that enterprise; the Ministry of Environment will be accountable to the public to assure compliance;
- competence: Environmental protection and regulation will be based on science and environmental domain knowledge applied by appropriately qualified professionals and persons, whether acting on behalf of industry or in the public service;
- timeliness: Decisions will be made, communicated, and implemented at the speed of the economy, meaning that, to the maximum reasonable extent, regulatory decisions made by government will not be a constraint to investment in the province;
- respect: Recognition that all levels of elected government have defined responsibilities to their citizens and that these must be respected; and
- affordability: An effective and efficient system that is economically viable and should result in a competitive advantage for Saskatchewan enterprises through a reduction of the burdens of environmental regulation, while maintaining environmental protection standards.

Within Canada, some jurisdictions have adopted results-based programs in the delivery of some services. The work of the Forest Service in British Columbia served as one model. To our knowledge, there is no other comprehensive province-wide, results-based program in any jurisdiction in Canada, although it is our understanding that Ontario is

working on such a program (J. Williams, personal communication, July 19, 2010). The work of the Swedish Ministry of the Environment on the Swedish Environmental Code was also studied in the development of Saskatchewan's model.

Based on societal pressure and environmental interests, and in consideration of their social license to operate, there has been a growing trend towards industry anticipating the eventual regulation of operations. This has resulted in industry establishing environmental protection plans and practices that meet or exceed their legal requirements. The large expenditure of resources this entails is viewed as a part of their social license to operate. We would argue that this is part of a broader evolution and growth of our society, its governance systems, and our understanding of our interaction with our environment.

With respect to the environment, prior to the parliamentary government, the prescriptive model was exemplified by the king's edict (e.g., "No deer may be taken from the King's forest"). Government has evolved from this to the current attempts to create a shared vision of the environment and its use. Note that the edict regarding the taking of deer could never have guaranteed the king that deer could actually be found in the forest. Now we are attempting to articulate the kind of forest our society desires and how we should share in its use. Results-based regulation is an attempt to entrench these concepts within the legal framework and to embrace the concept of social license within the law. It encourages dialogue across society regarding sustainable development and shared environmental vision as predictable and consistent aspects of the governance system, rather than as *ad hoc* outcomes. Through the establishment of environmental outcomes and results-based expectations within the Saskatchewan Environmental Code (Code), the RBR framework formalizes within law the expectations and desired state of the environment for society and articulates this to all who may use or have an impact on it. So, for government, there is assurance that the forest is maintained and, for instance, the deer populations remain healthy and harvestable.

RESULTS-BASED REGULATION

Simply put, RBR is an outcome-based process that specifies the environmental protection to be achieved and largely leaves the determination of how it is to be achieved to the proponent. Results-based regulation is not deregulation, self regulation, abdication of authority or responsibility by government, or an attempt to pave the way for unrestricted development. Results-based regulation establishes clear performance expectations while eliminating ineffectual scrutiny and attention to process, especially for routine, well-understood, and low-risk activities. It allows government resources to be focused on the monitoring and compliance of activities that pose a higher risk to the environment and to human health and safety. This is a result of a conscientious

examination of the efficacy and performance of the current system, and a measured response to focus on critical gaps. Arguably, the reliance on the existence of a permit as a guarantee of environmental performance is fundamentally flawed. Proactive consideration of the desired environmental outcomes and protection measures, coupled with effective monitoring and demonstration of performance, is a better model for environmental protection.

Much of the aim of a results-based regime is to decouple responsibilities for compliance from enforcement by clearly defining the desired environmental outcome and making the operators clearly accountable to provide that result. This approach requires strengthening the regulatory compliance and enforcement regime so that government can intervene when appropriate to assure compliance with the specified outcome. This strengthened role and the clear accountability of operators creates strong incentives for operators to properly manage risks to achieve the desired objectives. It also allows proponents to employ innovative and cost-effective measures to achieve the outcomes. The emphasis is on making progress toward environmental goals and targets and on enabling the regulated community to maintain compliance.

Forino (2006) proposed a set of core principles for RBR:

- establishing a system of core normative standards that place continuous pressure on regulated entities for improved performance;
- legal authority for governments to hold regulated entities accountable for meeting the core standards; and
- transparency, particularly publishing information to promote environmental progress.

These principles describe a modern regulatory system that protects public health and safety and the environment, while at the same time encouraging prosperity, innovation, and opportunity. In reality, this is just another way of defining a classic sustainability model with the needs of people, the environment, and the economy in balance. The key components that were decided on to achieve this sustainable vision are effective enabling legislation, clear environmental expectations and outcomes through the Code, enhanced compliance and enforcement codified in the supporting Acts, and improved information technology and information management processes to facilitate public understanding of these points. Each of these areas will be discussed below.

Code of practice

The Saskatchewan Environmental Code (Code) is a key component of Saskatchewan's results-based environmental regulatory framework. The Code will provide guidance to the regulated community on the requirements and desired outcomes for the management and protection of Saskatchewan's environment and natural resources.

The Code is being developed based on accepted science and acceptable practices, and collaboratively with

government, business, industry, academia/research groups, professionals, nongovernment organizations, First Nations, and Métis. Although the Code development structure has not been finalized, it is likely to be modeled on the National Research Council's code structure, which is responsible for the national code development for buildings, electrical, and fire. The proposed legislation enables an Advisory Committee of 11 individuals and the Minister of Environment as the chair to oversee the Code development, recognizing that the Code will be a living entity and evolve and grow over the years.

At present, the Saskatchewan Environmental Code sets out provisions regulating activities captured under the following Acts, which are expected to be proclaimed in 2012 (Saskatchewan Legislative Assembly, 2010):

- *The Environmental Management and Protection Act*,
- *The Forest Resources Management Act*, and
- *The Management and Reduction of Greenhouse Gases Act*.

The purpose of the Saskatchewan Environmental Code is to:

- consolidate and simplify environmental protection objectives, policies, standards, guidelines, and best practices in a single document to promote and enhance environmental protection;
- provide for regular review with ongoing public consultation on policies and regulations;
- promote efficiency in environmental protection through a clear, unambiguous regulatory framework;
- eliminate regulatory duplication and overlap; and
- promote uniform application of environmental protection policies across government.

Because a substantial section of the Code must be written to allow the Acts to be proclaimed, an interim Code Development Committee (CDC) has been formed to oversee the initial formation of the Code. The CDC is composed of experts from a wide range of areas. The CDC includes members from industry and industry associations; nongovernmental organizations; federal government; and consultants in the areas of law, code development, and engineering. The CDC is responsible for the review and approval of the Code structure and Code content. It directly oversees the Code Content Committees (CCC), which are responsible for developing the Code chapters in their area of expertise. The CDC and the CCC are ably supported by a secretariat that looks after all of the administrative and logistic needs of the committees.

Each CCC is led by a senior Ministry manager to ensure that the basic requirements of law are included in each chapter and that the Ministry's interests are protected. At the time of writing, there are more than 100 voluntary members of the CCC developing Code sections, and an additional 300 volunteers who could not be accommodated on the CCC, but will be valuable reviewers. The main Code chapters are:

- air
- municipal (including water, waste water, and solid waste),
- forestry
- climate change,
- fish and wildlife
- industrial (including hazardous materials and spill response),
- lands, and
- linear activities.

On the current schedule, the initial Code sections were released for public review in November 2011. Public review comments were solicited through an interactive web format until mid-February 2012. The CCC will review the comments and recommend any changes to the Code to the CDC, who, once they are satisfied with the Code, will recommend the adoption of the Code to the Minister. Once the Minister accepts the recommendation, the Code will proceed through the final government regulatory review process with final approval from the Lieutenant Governor in Council. This adoption of the Code will be timed to be coincident with the proclamation of the enabling Acts in the summer of 2012.

Each Code section will describe the outcome to be achieved, and if there are accepted practices for achieving that outcome, they will be offered as an acceptable solution. An acceptable solution to a Code requirement is, for all intents and purposes, pre-assessed and may proceed with less regulatory scrutiny. To promote innovation and continual improvement, the 2009 revised *Environmental Management and Protection Act* (EMPA, 2009) can accommodate alternative means of achieving outcomes by allowing the submission of an alternative strategy that is supported by a qualified professional. The alternative will have to demonstrate an equal or greater protection of the environment, and in addition to the normal requirements, provide options if the alternative solution does not perform up to expectations.

Qualified persons

The concept of qualified person is entrenched in EMPA (2009) as a means of facilitating RBR transactions and is central to delivering environmental protection as a regular business process. The qualified persons required and their specific tasks will be identified in each Code section to provide assurance that the activity is being done in compliance with the Code, will meet the Code outcomes, and is protective of the environment and human health and safety. Qualified persons are those persons qualified to perform the task through a combination of education, experience, and certification. Examples of qualified persons include professionals with a right-to-practice designation from a self-regulating professional organization (e.g., professional engineers) required to sign off on designs or critical documents, or persons with the appropriate level of certification to perform a task (e.g., operate a water treatment plant).

For low-risk activities, an identified qualified person may sign off on a project that may only have to be registered if the project is Code compliant or if they are using an approved alternative. Sign offs by a qualified person may also facilitate the review process for more complex projects normally requiring a more formal review and permitting process. For a proponent, the use of qualified persons will provide the necessary due diligence by providing projects that are designed (professional engineer), constructed (technologists and tradespeople), operated (a wide range of qualified persons), and decommissioned in compliance with the Code, thereby reducing liabilities at all stages of the project and improving environmental performance.

It is our expectation that the use of qualified persons will lead to improved submission quality, with fewer poor-quality submissions from well-meaning but unqualified persons. Although the Ministry will not be in the business of qualifying persons, the Code will be clear as to who is qualified when it is critical to delivering anything that may pose a risk to the environment or human health and safety. During the Code development process, each Content Committee will review all tasks and the qualifications necessary to complete that task. For tasks with some risk, qualified persons will be identified and codified.

Although environmental assessments do not strictly require qualified persons, their use would likely improve the quality of submissions and improve the timeliness of reviews. Because significant delays in environmental assessment often arise from the rounds of questions and responses needed to achieve a final document, the use of qualified persons to generate a high-quality submission will help minimize or eliminate this problem.

In Saskatchewan, the concept of qualified persons is not new and has been applied in the following environmental protection areas regulated by the Ministry:

- water and wastewater certification programs;
- installation or decommission of storage facilities for hazardous substances and waste dangerous goods;
- installation and servicing of equipment that contains halocarbons; and
- operational forest harvesting (specifically scaling).

For instance, the water and wastewater operator certification program, which is mandatory, sets training, education, and experience criteria for Saskatchewan operators. A self-funded certification board appointed by the minister certifies operators according to the criteria established by the Ministry. The program requirements are consistent with those used in most other North American jurisdictions.

Enhanced compliance and enforcement

Within the revised EMPA (2009), enhanced compliance and enforcement tools have been provided. Two compliance tools of note enabled by the legislation are the environmental compliance audit program and the ability to request environmental compliance audits from a company if they

are completing them on a routine basis as part of an environmental management system. Although compliance is the first and foremost goal, the EMPA (2009) also includes enhanced enforcement tools that bring the Act into line with other jurisdictions. This includes an increase in potential fines upon summary conviction to one million dollars per day, or part of a day, for each offence, with a possibility of jail time as well. In addition to any fine or jail time, the Crown can order any remediation or corrective action necessary. A wider range of administrative penalties will also be enabled by the Act (EMPA, 2009).

The EMPA 2009 also expands the Ministry's ability to require performance guarantees from a broader range of commercial and industrial facilities. Mining has been familiar with this mechanism for years, having to put forward bonds for decommissioning and reclamation performance, generally based on the 'decommission tomorrow' concept, a generally worst-case, end-of-operational-life scenario. How performance bonds will work with other industries has yet to be determined.

Also under EMPA 2009, there will be the ability to charge someone for false claims, such that a person who knowingly makes a false statement could be subject to a fine of up to \$25,000 and imprisonment up to 90 days upon summary conviction. Although this clause is meant to discourage frivolous and vexatious claims, it does not preclude investigation into well-intentioned complaints.

With any regulatory change, the government has a responsibility to provide information and assist the regulated community by introducing enhanced means for building the capacity to comply. This will include significant improvements to the information technology (IT) structure, allowing for better access to information, as well as the development of a client service office to manage new clients on a case-management basis. The improved IT capabilities will allow access to all requirements (especially the Code) in a user-friendly environment and allow for the submission of notifications and many applications online. Projects will be tracked and environmental data will be available for public examination of performance. The client service offices will be set up to assist proponents with their understanding of their compliance requirements and responsibilities, and the proponents will be tracked and facilitated on case management principles. It will not, however, be the Ministry's role to do the work for the proponent.

Reorganization of the Ministry

In addressing the requirements of the RBR framework, the Ministry of Environment has undertaken changes to its organizational structure that will allow staff resources to focus on compliance assurance, program integration, and coordination. The spectrum of environmental legislation and governance tools must be used as part of a continuum, rather than as discrete responses to proponent requests, incidents, or infractions. This imposes a need to establish

new dedicated client service, auditing, and technical review capabilities within the Ministry. The framework also implies greater data and information sharing as well as expectations of transparency that will require deployment of significant information management systems throughout the Ministry with links across government and to stakeholders, most likely via the Internet and other electronic media channels.

To date, the most visible changes in the Ministry's organizational structure have been:

- the creation of the Chief Engineer's position to lead the Technical Resources Branch;
- the creation of the position of Commissioner of Environmental Assessment to lead environmental assessment within a broader stewardship agenda; and
- the development of a Compliance Audit Branch.

Although there will be other, smaller changes required to adjust for RBR, the main challenge will be in re-orienting staff to focus on the higher risk areas.

Environmental assessment

The recommendations from the consultation process included a more holistic approach to environmental management under RBR, so it would be remiss to discuss RBR without talking about the lead role of environmental assessment. If RBR is truly about outcomes and the ability of the regulated community to understand those outcomes, then a strong and effective environmental assessment process is essential to gain an understanding of those potential outcomes for higher-risk activities. This would include projects that are proposing new technologies, have the potential to impact significant resources (whether an endangered species or significant amounts of a commodity), or generate considerable public concern. Although it was generally recognized during the consultation that the environmental assessment process was generally effective, it was perceived to suffer from some of the general problems of inconsistency and timeliness noted in other program areas. One of the main recommendations was that the environmental assessment process should be elevated from a mid-level environmental approval organization to an executive level environmental and socio-economic planning unit. Decisions made within the environmental assessment process impact the direction both of investment decisions and the nature of environmental protection. As such, the role of Commissioner of Environmental Assessment was created at the executive level. The Commissioner is charged with integrating environmental and socio-economic considerations into project development and strategic planning. This move allows for earlier engagement and affords the opportunity for increased efficiency through timely and integrated decision making within an integrated land-use planning framework.

Moving forward, the environmental assessment process will informally leverage the use of qualified persons, both

in the proponent's submissions, providing high-quality documents for review, and within the Ministry, reviewing the submissions for their completeness and accuracy of the predictions. The Technical Resources Branch, under the auspices of the Chief Engineer, will provide the technical expertise where the Environmental Assessment Branch does not possess it.

RBR AND THE SASKATCHEWAN URANIUM INDUSTRY

The Saskatchewan uranium industry (uranium mines and mills) uses a Crown (public) mineral resource, is located on Crown land in northern Saskatchewan, and is regulated by both Saskatchewan and the federal government. Although the province is generally responsible for the management of resources, uranium mining and milling are also regulated under the Nuclear Safety Control Act as administered by the Canadian Nuclear Safety Commission (CNSC). Due to its strategic nature, all things nuclear have a federal mandate because of the ongoing international concern about nuclear materials and activities. As such, uranium mining and milling attracts a full range of federal acts and regulations in areas also covered by the province, especially in the areas of environmental assessment and management.

This regulatory regime for uranium mining and milling has considerable potential for overlap and duplication, and contributes to substantive process delays in approvals and permits. Although these issues have been raised by industry and provincial regulatory agencies alike, the issues and their potential solutions are not the subject of this paper. Saskatchewan will continue to work with the federal government to eliminate, to the extent practicable, areas of overlap and duplication of regulation. Suffice to say, excessive regulation and a command and control regulatory structure can stifle innovation and continuous improvement and negatively affect uranium investment and development (Wittrup and Ritchie, 2007; Wittrup and White, 2004).

Mining and milling in Saskatchewan are regulated 'cradle to grave' by a wide array of applicable statutes, but in the environmental realm, Saskatchewan's environmental regulatory responsibilities for mining are administered through the *Environmental Assessment Act*, the *Environmental Management and Protection Act, 2002* (as being updated through EMPA, 2009), and *The Mineral Industry Environmental Protection Regulations, 1996* (E-10.2 Reg 7, 1996). These acts and regulations determine the province's expectations for the approvals process, licensing and permitting, and operation (e.g., Pollutant Control facility permit, with any requirements). They also set out the expectations for decommissioning and reclamation and the financial assurances necessary to assure that these activities will occur. There is also a requirement for State of the Environment reporting every five years. Under RBR, there will be no change in the current requirements under the acts and

regulations. What should change under the new system is the ability to shift many items that required formal submission, review, approval, and the issuance of some form of permission to a notification or a simpler review process for routine, well-understood, and low-risk activities. Given the high level of regulatory scrutiny uranium mining and milling has traditionally undergone, significant improvements under RBR may be slow in materializing, especially when blended with the federal expectations.

To provide more assurance to proponents about decommissioning and reclamation, Saskatchewan has developed the *Reclaimed Industrial Sites Act* and regulations to provide clear post-decommissioning expectations for companies and a safe reintegration of mine sites to the Crown land base. This provides the proponent some assurance that they will eventually be able to exit a project, provided they have met the requirements of their decommissioning and reclamation and left the site in a stable, nonpolluting state. There is a responsibility for ongoing monitoring funding and under the Act, the proponent retains responsibility for future liabilities if the decommissioning does not behave as predicted.

Critical to the success of the uranium mines and mills in northern Saskatchewan is the involvement of northern stakeholders in the review of environmental information for new and ongoing operations through Environmental Quality Committees (Saskatchewan First Nations and Métis Relations and Northern Affairs), environmental assessment-related public consultation, operating approval renewal meetings, and company consultation tours. Even though there are other forums, these venues for ongoing consultation will result in continual improvement of environmental monitoring and regulatory approval processes. As part of their commitment to continued operations and their social license, the mining companies engage a wide range of stakeholders and conduct significant social and economic programs in northern Saskatchewan.

The Saskatchewan government, to fulfill its formal duty to consult with First Nations and Métis communities, will consult within the guidance of the province's consultation policy framework. Within the Ministry, the coordination of duty to consult activities rests with each branch, with guidance and coordination from the Aboriginal Affairs Branch. For an environmental assessment, it is expected that the proponent will provide, as part of the impact statement, details of potential impacts to treaty rights and discuss any accommodation needed. The Ministry will then use that information to complete the province's duty to consult as per the consultation policy framework.

The new acts, *The Environmental Management and Protection Act, 2009* (Bill 121); *The Environmental Assessment Act* (Bill 122); *The Forest Resources Management Act, 2009* (Bill 123); and *The Management and Reduction of Greenhouse Gases Act* (Bill 126), all passed third reading and received royal assent in May 2010. Because it is so

tightly linked to the Code, it has been proposed not to proclaim the legislation for EMPA 2009 until a majority of the Code is in place, likely mid-2012. *The Environmental Assessment Act* amendments, *The Forest Resources Management Act*, and *The Management and Reduction of Greenhouse Gases Act* will be proclaimed in 2012 once their supporting regulations and guidance are in place. Information on the progress of this legislation can be found at the Saskatchewan Legislative Assembly website (Saskatchewan Legislative Assembly, 2010).

DISCUSSION

As governments and the regulated community recognize the limits of their resources, RBR provides a working model for the future of environmental regulation. Results-based regulation is designed to move the existing environmental regulatory structure into the present, leveraging the extensive increase in knowledge in environmental management and regulation over the last 20 plus years. If RBR is risk-informed, that extensive knowledge allows a better understanding of what activities are low-risk and routine and therefore require less regulatory oversight. Given that a significant level of resources are tied up in administering these generally well-understood, routine, and low-risk activities, both within government and the regulated community, then RBR has great promise for freeing up resources to better administer the higher-risk activities. This can only enhance environmental protection.

The regulated community has to understand that this freedom from the routine requires an acceptance of their responsibilities under the Acts and the Code. Large, well-staffed companies, such as mining and milling companies, tend to have very well-staffed environmental departments, and will find little news in this statement. The challenge will be to provide the capacity for small- to medium-sized enterprises to understand their role under RBR. This will be achieved through the proposed client service offices and improved IT capabilities. Although there are enhanced enforcement capabilities under the Acts, compliance activities will remain the focus of the Ministry as it works to implement RBR. Enforcement is the big stick that the Ministry hopes not to use very often.

The key to RBR is the use of qualified persons to provide assurance to the Ministry and by extension, the public, that the work proposed is protective of human health and the environment, and fully compliant with the Code. Much work is still required to finalize the Code and the role of qualified persons within each Code section. One of the strengths of Code development has been the involvement of a diverse group of stakeholders, and their continued involvement will be equally important as we move forward to finalize the Code and develop the working committees that support it.

It is difficult to predict what the overall net benefits of RBR are for our industrial example, the uranium industry in Saskatchewan, given its high level of regulatory over-

sight by the federal and provincial governments. The issues of overlap and duplication and a lack of timeliness overall will likely remain until more advanced agreements are in place between both levels of government. That said, where the provincial process is concerned, significant improvements should be apparent for routine, low-risk, and well-understood situations. This should allow companies to better align resources with risk. The RBR initiative provides tools for expediting approvals, including the Code, class environmental assessments and environmental protection plans, information technology support, client service offices, and overall improved clarity of expectations. For instance, the Code is flexible enough to allow what is novel and innovative today, and requiring enhanced scrutiny from the regulatory process as an alternative method means that it can be developed into a routine Code item, given time and experience. If the uranium industry works to understand RBR and takes a leadership role in its implementation, there should be significant benefits and a better use of scarce resources.

CONCLUSIONS

Saskatchewan is taking a leadership role in improving environmental regulation through the development of a results-based regulatory framework. Although much work is yet to be done, RBR will clarify the roles of government and the regulated community, and provide clear expectations for environmental outcomes. The use of the Code, supported by qualified persons, promises, through risk-based criteria, to effectively move the effort of regulation from the low-risk routine activities to the higher-risk activities, providing for enhanced environmental performance overall. If the goal is to improve the sustainability model by removing artificial process barriers, then RBR holds great promise. The risk to RBR occurs where we do not have the courage to follow our own risk analyses and provide the appropriate process relief within the system. These risks can be further compounded if there is an unwillingness to act upon indications of unforeseen environmental damage. Continued strong leadership on RBR and active involvement from the regulated community should prevent that from occurring.

Saskatchewan is embarking on an historic journey, one that has the promise to provide a regulatory model for others to follow. The benefits include better use of resources, which, in and of itself, is part of the enhanced environmental protection that is expected from RBR. Results-based regulation sets up a framework for the province to take significant steps forward in entrenching sustainability and stewardship into its environmental regulatory actions.

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