Alberta

ENVIRONMENTAL APPEAL BOARD

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1995 ABEAB 23

Appeal No. 95-009
Date of Pre-hearing Meeting - July 5, 1995
Date of Hearing - November 1, 1995
Date of Report and Recommendations - December 1, 1995

IN THE MATTER OF Sections 84, 85, 86, 87, 91, 92 and 93 of the *Environmental Protection and Enhancement Act,* (S.A. 1992, ch. E-13.3 as amended);

-and-

IN THE MATTER OF an appeal filed by Rodney A. Keller with respect to the approval issued by the Director, Land Reclamation Division, Alberta Environmental Protection to the Municipal District of East Peace No. 131.

Report and Recommendations

Cite as: **Rodney A. Keller v. Director, Land Reclamation Division, Alberta Environmental Protection.**

HEARING BEFORE: **Joan C. Copp, Chair**
Max A. McCann
M. Anne Naeth

APPEARANCES:

Appellant: **Rodney A. Keller, on his own behalf**

Other Parties: **Director, Land Reclamation Division, represented by Raymond K. Bodnarek (counsel).**

Witnesses: Brendan J. Vickery, Robert W. Onciul, Tiffany Brummund, and Eberhard F. Lorberg.

Municipal District of East Peace No. 131, represented by Kelly Bunn.

For a list of exhibits in this matter, please see Appendix.

I. FACTUAL BACKGROUND

On March 23, 1995, the Director of the Land Reclamation Division of Alberta Environmental Protection (the "Director") issued Approval No. SG-8-95 (the "Approval") to the Municipal District of East Peace No. 131(the "M.D.") with respect to the opening up, operation and reclamation of a sand and gravel pit (the "pit") located on NE 33-84-21-W5M.

Rodney A. Keller (the "Appellant") filed a notice of objection which was received by the Board on April 26, 1995. He appealed the issuance of the Approval on the grounds that "The terms and conditions as set out in Approval No. SG-8-95 fail to provide adequate criteria for environmental protection and site reclamation". He raised a number of issues in his notice of objection including:

- **the adequacy of the reporting conditions in the Approval;**
- **the adequacy of the information provided in the application and the lack of operational and monitoring detail in the Approval;**
- **the size of the buffer;**
- **the potential for contamination of an aquifer which he believed was under his land;**
- **the adequacy of the M.D.'s obligation to reclaim, and**
- **the lack of an obligation on the M.D. to post financial security to ensure satisfactory reclamation.**

The Appellant owns land immediately adjacent to the pit. He had earlier submitted a statement of concern with respect to this matter to the Director and, having filed within 30 days of receiving notice of the issuance of the Approval, his notice of objection was therefore validly filed with the Board.

On April 27, 1995, the Board wrote to the Director advising him that the appeal had been filed and requesting a copy of the Approval as well as the application for it. Also on that date, by a copy of the letter to the Director, the M.D. was informed that an appeal had been filed. Raymond Bodnarek, Barrister and Solicitor, Environmental Law Section, Alberta Justice responded to the Board on behalf of the Director and the Department of Environmental Protection (the "Department") and provided the documentation as requested.

The Board wrote to the three parties on June 2, 1995 asking several questions in connection with the Appellant's concerns and requesting a detailed plan for the pit as well as a topographic map of the immediate area. Responses were requested by June 19, 1995. Answers to the Board's questions were provided within the deadline by the Appellant and the Director; the response from the M.D. was received on June 21, 1995.

The Board decided to convene a pre-hearing meeting to determine whether a resolution of the concerns might be resolved through mediation. This meeting was held in Edmonton on July 5, 1995, and it was decided at that time to adjourn further consideration of the appeal until August 24, 1995 to permit the parties to continue their discussions. Immediately prior to that date, the Board contacted the parties to determine the status of the appeal. The Appellant indicated that progress was not being made and that he wished to proceed with the appeal.

The Board scheduled a hearing for November 1, 1995. The Notice of Hearing was published in the *Peace River Record Gazette* on September 13, 1995 and a copy of it was sent to the M.D.. The M.D. wrote a letter to the Board requesting party status at the hearing, and the Board agreed to the request.

Written submissions, in accordance with section 10 of the Environmental Appeal Board Regulation[1], were filed with the Board by all three parties prior to the hearing.

II. SUMMARY OF THE EVIDENCE

(a) Evidence of the Appellant

The Appellant, presented evidence on his own behalf. In his opening statement he stated that the responsibility to monitor the operation of sand and gravel pits has shifted from the Department to operators in the past several years. According to him, the M.D. has been unable to discharge its obligations under the Approval and the Board should cancel the existing Approval and issue another approval with conditions which would more properly protect the environment.

The Appellant testified that he bought his property approximately 20 years ago and uses it for recreational purposes. His land lies immediately to the east and south of the M.D.'s land and is higher in elevation to the land on which the pit is located. The views from the Appellant's land are of the Peace River and the Peace River valley; the land on which the pit is situate borders the Peace River. The other land around that owned by the Appellant and the M.D. is Crown land. The Appellant takes the position that he is the only person who is in a position to speak to most of the concerns. In addition, he filed a statement of concern earlier with the Director when notice of the Approval was published. The Appellant stated that he was not satisfied with the responses he received from the Director to the issues he raised in his statement of concern and therefore filed the notice of objection.

[1] **Alta. Reg. 114/93.**

The Appellant presented a very thorough description of his concerns regarding (a) the materials filed with the Director by the M.D. in support of its application for the Approval, (b) the Approval, and (c) the M.D.'s operation of the pit. The Appellant, a professional engineer, testified that in his belief, the drawings and plans submitted by the M.D. in its application to the Department were "meagre and inaccurate", were computer generated and were not sufficiently site specific. He also stated that the operating plans filed by the M.D. did not define how or where development of the pit would take place. He testified that because the M.D. had not submitted any pre-site assessment of the top soils or sub-soils available on the site or in the district to reclaim the site after the pit had been depleted, it was difficult for both the Department and the M.D. to determine whether or not it would be possible to ultimately reclaim the pit.

The Appellant continually raised the concern in his evidence that the Approval, which was granted for 10 years, was based on incomplete and inaccurate information and that more specific, accurate and detailed information with respect to the development of the pit and how it would be reclaimed should be required by the Director from the M.D..

The Appellant pointed out discrepancies between the M.D.'s application and the Approval, including:

- **the pit appeared to be a 100 acre pit disturbance, but the application states in one section that 2 hectares would be developed, but in another section it states that there would be 5 to 10 hectares open at any one time;**

- **the M.D. indicated that it would be reclaiming the pit progressively, whereas under the terms of the Approval reclamation is not required until all of the resources have been depleted. The Appellant questioned if one or two truckloads of resource were left**

in the ground whether or not there was any obligation on the part of the M.D. to reclaim the pit.

The Appellant also raised the concern that the M.D. had not been required to post any form of financial security with the Department to pay for the cost of reclamation. He argued that although it may be government policy not to require financial security from municipalities, this should be reconsidered when a 10 year Approval is issued with incomplete and inaccurate information. In addition, he indicated that as a taxpayer of the M.D. he would rather see financial security be provided in an orderly manner than be faced with an expensive reclamation bill in 10 years time if the site had not been properly reclaimed.

The Appellant testified that he received notice of the issuance of the Approval from the Director by a letter dated March 23, 1995. On April 3, 1995 he spoke by telephone with the local inspector, Tiffany Brummund. He testified that the inspector was not familiar with the site and did not have any current information regarding the pit. He testified that he outlined his concerns to her and that in response to his concerns, she inspected the pit.

The Appellant produced a series of pictures of his property and the pit taken during an inspection which he conducted of the site and the M.D.'s property on July 1, 1995. He testified that, in his opinion, there were deficiencies and contraventions of the Approval, including a lack of stripping at the pit face and under the aggregate stock piles, evidence of hydro-carbon spills, test holes being used as land fills, and garbage accumulating on the site. He also testified that none of the depleted areas had been reclaimed. He opined that lack of foresight and lack of planning on the part of the M.D. was causing these problems and that he did not have confidence that these concerns would be corrected "without outside interference."

The Appellant testified that the progress of the pit did not appear to coincide with the plans filed with the M.D.'s application for the Approval.

The Appellant testified that he has very clean spring water running in a stream across his land in several places. He expressed concern that any ground water or an aquifer underlying his property might be affected by the operations at the pit. He testified that there did not seem to be any information either with the M.D. or the Department as to the potential impact of the pit's operation on water in the area.

The Appellant concluded by stating that it was in the best interests of the M.D. that its obligations with respect to this pit be conducted properly now. He stated that the terms and conditions of the Approval issued by the Director are not strong enough and that it has been necessary for the Department to use enforcement procedures to deal with several problems at the pit. It is his position that the M.D. must be held accountable for these matters in order that the small problems that now exist at the pit do not result in large, expensive, and perhaps irreversible, problems in the future.

(b) Evidence of the Director

The evidence of the Director was presented by Brendan Vickery, Senior Review Coordinator, Conservation and Reclamation Review Branch, Robert Onciul, Manager, Northern Region, Field Services Branch, and Tiffany Brummund, Conservation and Reclamation Inspector, (Peace River Office), all of the Department.

Mr. Vickery provided a very thorough review of the process used by the Department in reviewing applications for sand and gravel approvals and the type of evaluation which takes place during the application review process. Mr. Vickery testified that he was familiar with this particular application and

Approval. His overall assessment of the application and this Approval was that the impact of the pit would be "benign" based on the existing land use of the site, the soil types on this site, the nature of the operation and the application information provided by the M.D. in its application.

Mr. Vickery testified that the terms and conditions in the Approval are standard approval conditions for a dry pit operation. He presented a checklist of factors (which he developed for the hearing) setting out what the Department looks for when it is reviewing an application. Mr. Vickery testified that the application review process is the same for a local authority and a private operator; the reclamation standard of "equivalent land capability" is also the same.

Mr. Vickery testified that he attended the site of the pit on October 30, 1995. Having inspected the pit, his conclusion was that the operations at the pit by the M.D. have not forever precluded reclamation of the site. He testified that a few things could have been done better and that they will require additional work with careful supervision. It was his evidence that in the short run the problems at the pit must be cleaned up. He testified that the site is reclaimable but will need more care and control in the future than it would otherwise require. He also indicated that it will cost more in the long run but equivalency could be achieved.

With respect to section 7.1 of the Approval[2], Mr. Vickery's evidence was that as aggregates are extracted the land would be reclaimed. The position of the Department is that "the operator is the expert". The operator, or approval holder, decides whether or not the pit has been depleted or abandoned. He testified that the Department "encourages reclamation" but is realistic with respect to its approach on reclamation. He testified that the M.D.'s commitment in the

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[2] **Section 7.1 states: "Reclamation of the disturbed land shall begin when aggregates are depleted or when activities and operations are abandoned."**

application to progressive reclamation was ambitious and should be reconsidered. It was also Mr. Vickery's evidence that, although the total approved area on this site was 100 acres, the conservation and reclamation plan currently approved was only 27 acres; any change to the plans would require an amendment to the Approval.

With respect to the possible contamination of ground water, it was Mr. Vickery's testimony in response to questioning by the Appellant, that there was a low potential of contamination with respect to the 27 approved acres but that there could be a possibility of contamination when the expansion went beyond the initial 27 acres.

In response to questioning on cross examination as to how it happened that the M.D. performed work not in accordance with the plans and therefore in contravention to the Approval, the Department's evidence was that there are not enough people monitoring the system, that there are only one quarter of the inspectors necessary to perform the work and, accordingly, the Department cannot be assured that the terms and conditions of approvals will be carried out.

Mr. Vickery testified that the obligations are on the approval holder and the Department has to rely on the approval holder to discharge its obligations under the terms and conditions.

In response to a question from the Board as to whether or not he would include different terms and conditions in the Approval if he was granting it to the M.D. at this date, Mr. Vickery answered that he would.

With respect to the issue of financial security, Mr. Vickery testified that local authorities are not required to post financial security as otherwise required by the *Environmental Protection and Enhancement Act* and the regulations. This is Department policy and is based on the premise that local authorities "are not

going to leave the jurisdiction" and that they are not competing with private operators. He testified that it is the Department's position that the undertaking in the application form[a] is sufficient to satisfy the requirements of the Act and regulations with respect to financial security. Private operators of sand and gravel pits are required to post financial security; they also complete the same application as a local authority and sign the same undertaking. Mr. Vickery testified that the posting of financial security is an effective tool to ensure proper reclamation of disturbed sites.

In response to questioning as to whether it would be more appropriate to define the areas of development on the conservation and reclamation plans, Mr. Vickery indicated that, in hindsight, those areas should have been more clearly delineated on the M.D.'s plans. Notwithstanding that the level of detail provided on the conservation and reclamation plans and the application seem to be somewhat lacking, Mr. Vickery indicated that the level of detail was considered administratively complete by the Department.

Mr. Onciul supervises reclamation inspectors in the northern half of the province. He conducted site visits at the pit on July 12 and October 23, 1995. He testified that the activities that have taken place at the pit have not forever precluded reclamation of the pit, but that reclamation will be more difficult, and "will require more preparation and extra work" in order to reclaim the site.

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[3] **The applicant's declaration reads:**

> **"I certify that the information provided in this application is an accurate description of the site and of the operation and reclamation of the pit. I will conserve and reclaim the site as described in this application, follow the terms and conditions of the approval, and secure a reclamation certificate upon completion."**

Tiffany Brummund, the inspector for the northwest part of the province, testified that she visited the pit 15 times between April 5, 1995 and October 30, 1995. Her first visit to the site on April 5, 1995 was in response to the Appellant's telephone call to her on April 3, 1995. She stated that the Approval was issued on March 23, and that she knew the M.D.'s equipment had been put in place at the pit on March 20 and that they were planning to start activity on March 23, 1995. She decided not to visit the pit initially because the M.D.'s plans indicated that they were going to start in the previously disturbed pit area and that they were going to stock pile on the existing stock pile sites. She testified that the M.D. did not provide a 10 day notice of the beginning of its operations as required by the Approval, but that her decision to attend or not attend the site prior to commencement of the work would not have been different even if they had given her the 10 days' notice.

Ms. Brummund testified that she issued a Conservation and Reclamation Notice to the M.D. on October 25, 1995 to deal with a number of issues which had been outstanding for a period of time.

She testified that her visits to the site were in response to complaints, and normally she would visit a pit on an annual basis only because of manpower allocations. She stated that there are not enough people to follow-up and inspect approved sites. She testified that she covers a large geographic area which includes 53 regulated pits, 140 other pits; visits to sand and gravel pits comprise only 15% of her workload. She testified that the site can be reclaimed but it will be "more complex" to do so.

(c) Evidence of the M.D.

Kelly Bunn, the Chief Administrative Officer of the M.D. testified on behalf of the M.D..

Mr. Bunn began his testimony by stating that the council of the M.D. took its environmental responsibilities seriously, that the M.D. was "better than the previous operators of the pit", the M.D. received no personal benefit from the pit, and that it was disappointed that it was being "forced to defend their actions because of this appeal". He also indicated that "this whole matter has been blown out of proportion" and that it "sounded like an environmental disaster" which it really wasn't. He testified that the M.D. had limited experience in the operation of a pit and had taken over the ownership of this pit only a year and a half ago from Alberta Transportation. He indicated that with respect to financial security, the council of the M.D. was accountable only to its taxpayers.

Mr. Bunn testified that the operation of the pit was being performed by a third party contractor which had been in business since the 1960's and he thought "they would know what to do".

Mr. Bunn testified that he thought that the M.D. would comply with the terms and conditions of the Approval. Although they had had problems with the contractor in the past, they had faith in the engineer and the contractor and they were going to handle the pit operations "better in the future". In his closing remarks, Mr. Bunn stated "we're holding a match and got our fingers burned, but we never burned the house down so we can still repair what we have done". He stated that the imposition of further conditions was not necessary and they would work to "get the site back to what it should have been"

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III. THE BOARD'S CONSIDERATION OF THE ISSUES RAISED IN THIS APPEAL

During the course of the hearing it became apparent that the Appellant's concerns regarding the size of the buffer surrounding the pit and the

possibility of contamination of the aquifer were not major issues. The Appellant's case may best be set out in the following questions:

1. **Are the terms and conditions contained in Approval No. SG-8-95 adequate to protect the environment, and to ensure reclamation as contemplated by the Act and regulations when performed by the approval holder?**

2. **Should this approval holder be required to post financial security to ensure satisfactory reclamation?**

In his closing arguments counsel for the Director argued very strongly that the scope of the hearing of this appeal should be limited to a review of whether or not the decision of the Director was "reasonable" in issuing the Approval. He argued that what is reasonable is less than perfection and that approvals can always be refined and improved but that this Board must limit its consideration to a review of the Director's decision at the time he issued the Approval. With respect, this Board does not agree.

Perhaps in the normal course the regulatory system outlined by Mr. Bodnarek works. When things don't work , however, they quite often end up before this Board. It became very apparent during the course of this hearing that from the very day the Approval was issued that things did not proceed in the normal course. The M.D. was required to give 10 days' notice to the local inspector before commencing any pit activities. It did not. The actions of the M.D. during the first seven months of this Approval are an example of how an activity can go wrong.

The Board heard a great deal of evidence about the heavy workload of the people within the Department and of the local conservation and reclamation inspector. The Board is very sympathetic to this position. The Board was also very impressed with the thorough and thoughtful evidence presented by all of the employees of the Department. It is very obvious that these people are trying

to do a good job with very limited resources and are concerned about what

transpired in this particular case. When resources are scarce, as they are at the current time, sometimes a third party needs to step into the breach. This is such a case.

At a time when the local inspector was exceedingly busy, it was required that she visit this one pit 15 times in a seven month period. It has also required the attendance on several occasions of more senior officials in the Department. The conclusions of each of these people is the same - this situation can be remedied and that irreversible damage has not been done. It will, however, require more time, money and effort to correct the situation.

Without the Notice of Objection filed by the Appellant operating as a public complaint, this situation could have continued for a very long period of time before it was noticed by anyone within the Department. It is easy to imagine that if this situation was overlooked for even a few more months, irreversible damage to this site could have occurred.

While a Notice of Appeal should not operate as a form of complaint, it has had that effect in this case. The monitoring and enforcement arm of the Department was needed to inspect this pit and deal with the M.D. on an ongoing basis.

This Board is not only concerned that the M.D. has not performed well, but that Mr. Bunn did not express any particular concern about this. During the course of the hearing he even took the opportunity to attack the bona fides of the Appellant rather than focus on the performance of the Approval holder.

The evidence of the Department is that it relies on approval holders to do their job properly. Unfortunately, this does not always happen and this is an example. Despite the best intentions of the Department's employees, an unsophisticated approval holder performed poorly. If this situation were to come to the attention of the Director, he might consider that the terms and conditions of the Approval

granted to the M.D. should be amended. The Act specifically provides that the Director can amend a term or condition of an approval on his own initiative:

> **67 (3) If the Director considers it appropriate to do so, the Director may on his own initiative in accordance with the regulations**
>
> **(a) amend a term or condition of, add a term or condition to or delete a term or condition from an approval**
>
> **(i) if in the Director's opinion an adverse effect that was not reasonably foreseeable at the time the approval was issued has occurred, is occurring or may occur,**
>
> **(ii) if the term or condition relates to a monitoring or reporting requirement,**
>
> **(iii) where the purpose of the amendment, addition or deletion is to address matters related to a temporary suspension of the activity by the approval holder, or**
>
> **(iv) where the approval is transferred, sold, leased, assigned or otherwise disposed of under section 72,**
>
> **(b) cancel or suspend an approval, or**
>
> **(c) correct a clerical error in an approval.**
>
> 1992 cE-13.3 s67;1994 c15 s27

The Act anticipates that a Director can amend an approval when it is not working. The Board has the same power. This Board will not lightly interfere with the terms and conditions of an approval but where circumstances warrant based on the evidence brought before it, the Board will, and is obligated to, recommend amendments to an approval in order to properly protect the environment. This is one situation where the circumstances so require.

What is required of an approval holder? At one point in his evidence, Mr. Vickery indicated that "the approval holder is the expert" with respect to the operation of the activities under his approval. The M.D. has not fulfilled its responsibilities in this regard. Mr. Bunn testified that a request for proposals to operate the pit was sent out by the M.D. before the Approval was granted; the request apparently contained a blanket clause indicating that the successful

tenderer would have to comply with the terms of the Approval. The contract was also apparently entered into between the M.D. and the successful bidder on that basis and after the contract was executed, the M.D. provided the contractor with a copy of the Approval. Mr. Bunn testified that they had hired a contractor who had been in business since the 1960's and they thought that he would know what he was doing.

The Department intends companies and local authorities to be self regulating. Both the Government and the public should have confidence in the ability of such self monitoring bodies to uphold their end of the bargain. In this case the M.D. did not. The steps the M.D. took to ensure that the terms and conditions of the Approval were being met were not satisfactory to meet its obligations.

Mr. Bunn's testimony that the M.D. takes its environmental responsibilities seriously is not reflected in the actions of the M.D. Actions speak louder than words. This Board believes that this approval holder needs to be more accountable and that the Approval should be amended.

The second issue for the Board to consider is the exemption granted to local authorities with respect to the posting of financial security in reclamation matters. Section 120 of the *Environmental Protection and Enhancement Act* states:

> **120(1) If required by the regulations, an operator shall provide financial or other security and carry insurance in respect of the activity carried on by the operator on specified land.**
>
> **(2) Subsection (1) does not apply to the Government or a Government agency.**

Counsel for the Department indicated that a local authority does not fall within the definition of "Government" or a "Government agency". The position of the Department is that the amount and form of security required under this section is within the discretion of the Director pursuant to sections 18 and 21 of the

within the discretion of the Director pursuant to sections 18 and 21 of the *Conservation and Reclamation Regulation*[4]. The Director takes the position that the form of security acceptable from local authorities is the undertaking contained in one sentence in the declaration on the application form for an approval.

The Department's policy of not requiring a letter of credit or other form of monetary tender as financial security from local authorities will not be reviewed by this Board. The Board does believe, however, that local authorities appear to believe they have an exemption from this requirement because they are local authorities and not because they have provided security in the form of an undertaking. It is likely that these local authorities do not appreciate the significance of the statement in their declaration on the application form and certainly do not appreciate that this is a legal undertaking. Perhaps if the undertaking formed a separate part of the application for an approval it would impress upon those parties signing it that they are making an agreement with the Government to reclaim the land.

IV. COSTS

During the hearing, Mr. Bunn indicated that he would be seeking costs in this matter. At the close of the hearing, the Board advised the parties that anyone wishing to apply for costs should do so in writing to the Board within one week. The Appellant sent a letter to the Board stating that he would not seek costs and nothing was received from the other parties.

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[4] **Alta. Reg. 115/93, amended by 245/93.**

The discretion to award costs rests with the Board. By letter dated November 24, 1995, the Board advised the parties that it was not making an award of costs to any party in this matter.

V. RECOMMENDATIONS OF THE BOARD

1. The Board recommends that the Director be ordered to amend the Approval as follows:

- **Ongoing monitoring obligations be imposed on the M.D. with a requirement that, at a minimum, the M.D. submit reports and conservation and reclamation plans to the Director every 6 months;**

- **the term of the Approval be amended to expire on March 23, 1998;**

- **the M.D. be required to post security, by way of irrevocable letter of credit, in an amount to be determined by the Director (but not in a nominal amount); the Director may reconsider the requirement for posting financial security at the expiry of the Approval in 1998;**

The exact wording of the amendments should be left with the Director.

2. Assuming the Department wishes to continue its policy of exempting local authorities from the requirement to post financial security, the Board recommends that the Director review the form of undertaking required of local authorities making application in matters requiring reclamation. The Board recommends that the undertaking be more specific.

3. With respect to section 92(2) of the Act, the Board recommends that copies of this Report and Recommendations and of any decision by the Minister be sent by the Board to the following parties:

Rodney A. Keller;

Municipal District of East Peace No. 131
do Kelly Bunn, Chief Administrative Officer with a direction that Mr. Bunn provide a copy of the Report and Recommendations and the Minister's decision to each of the members of council of Municipal District of East Peace No. 131; the M.D.'s contractor with respect to the pit and the person employed by the M.D. who is supervising the contractor; and

the Director, Land Reclamation Division,
Alberta Environmental Protection
do Raymond K. Bodnarek, Alberta Justice.

Dated on December 1, 1995 at Edmonton, Alberta.

"original signed by"
_____
Joan C. Copp, Chair

"original signed by"
_____
Max A. McCann

"original signed by"
_____
M. Anne Naeth

ORDER

I, Ty Lund, Minister of Environmental Protection:

_____ **Agree with the Recommendations of the Environmental Appeal Board and order that they be implemented.**

__X__ **Do not agree with the Recommendations of the Environmental Appeal Board and make the alternative Order set out below:**

"The original approval #SG-8-95 stands."

Dated at Edmonton this 4th day of January, 1995

_____

Honourable Ty Lund
Minister of Environmental Protection

_____ **Refer to attachments (only if applicable)**

APPENDIX

EXHIBITS LIST

Appeal No. EAB 95-009

No.	Description	Filed By
1	Notice of Hearing	the Board
2	Application # RS 10198	the Board
3	Approval #SG-8-95	the Board
4	Peace River Industrial Resources Pit Contour Plan-Drawing P4046-1	Appellant
5	Peace River Industrial Resources Pit Cross-Sections-Drawing P4046-2	Appellant
6	Photograph - well site in question	Appellant
7	Photograph - well site in question	Appellant
8	Aerial Photograph taken of M.D. of East Peace land and Mr. Keller's land on June 22, 1992	Appellant
9	(a-f) Photos of sand and gravel pit - descriptors - crushed stockpile; not stripped; topsoil pile removed	Appellant
10	(a-h) Photos of sand and gravel pit - descriptors - garbage - summer; garbage - fall	Appellant
11	(a-k) Photos of the spring on Mr. Keller's land - descriptor - springs, trees, alfalfa	Appellant
12	(a-b) Photos of sand and gravel pit - descriptor - north pit exhausted	Appellant
13	(a-c) Photos of sand and gravel pit - descriptor - ad-mixed soils, topsoil, subsoil, overburden and rocks	Appellant
14	(a-b) Photos of sand and gravel pit - descriptor - gravel stockpile, missing topsoil stockpile	Appellant
15	(a-e) Photos of sand and gravel pit - descriptor - oil spills summer ; oil spills fall	Appellant
16	(a-b) Photos of sand and gravel pit - descriptor - Wainwright pit, well site stripping, Kinsella reclamation, 400 BBC Tank, 63, 500 L	Appellant

APPENDIX

EXHIBITS LIST

Appeal No. EAB 95-009

17	(a-b) Photos of sand and gravel pit - descriptor - stripped with gravel, clean stripped soil	Appellant
18	(a) Photos of sand and gravel pit - descriptor - topsoil stock pile, overburden stockpile and old gravel stockpiles	Appellant
19	(a-h) Photo of sand and gravel pit - descriptor - stripping, fall; test holes, fall (October 14, 1995)	Appellant
20	(a) Photo of sand and gravel pit - descriptor - south pit	Appellant
21	(a-b) Photos of sand and gravel pit - descriptor - test holes - summer (July 1, 1995)	Appellant
22	Chemical analysis report done by Prairie Biological Research Ltd. on October 17, 1995 - routine chemical analysis of water for chemical composition	Appellant
23	Native Topsoil (relates to photograph 25)	Appellant
24	Stockpile (relates to photograph 17 (b))	Appellant
25	Photograph (relates to Exhibit #23)	Appellant
26	Letter dated August 18, 1995 from Tiffany Brummand to M.D. of East Peace No. 131	Appellant
27	Curriculum Vitae - Department's Witnesses	Department
28	Checklist - Dry Pit/Wet Pit Operations	Department
29	Canada Land Inventory Soil Capability for Agriculture Report	Department
30	Letter dated October 25, 1995 from Tiffany Brummand addressed to M.D. of East Peace No. 131 enclosing a Conservation and Reclamation Notice and an addendum to that Notice	Department
31	Photo taken on August 8, 1995 by Tiffany Brummand of site in question in Exhibit (10(b)) filed by Appellant - descriptor - clean up of garbage in test hole	Department
32	Sand and Gravel Inspection Report dated May 30, 1995	Department

33	**The Canada Land Inventory Soil Capability For Agriculture in Alberta Report - Alberta Environment May 1977, Prepared by L. Brocke, Pedology Consultants**	**Appellant**

APPENDIX

EXHIBITS LIST

Appeal No. EAB 95-009

34	**Fax dated August 23, 1995 addressed to Rodney Keller from Raymond Bodnarek, Counsel with the Department of Environmental Protection**	**Department**
35	**(a-p) Photographs taken of sand and gravel pit in 1992 prior to purchase**	**M.D. of East**
36	**(a-q) Photographs taken of sand and gravel pit in October 1995**	**M.D. of East**
37	**(a-o) Photographs of another sand and gravel pit taken in 1992 for comparison**	**M.D. of East**