ALBERTA
ENVIRONMENTAL APPEAL BOARD

Report and Recommendations

Date of Hearing – December 3, 2002
Date of Report and Recommendations – December 30, 2002

IN THE MATTER OF Sections 91, 92, 94 and 95 of the *Environmental Protection and Enhancement Act,* R.S.A. 2000, c. E-12;

-and-

IN THE MATTER OF a Notice of Appeal filed by Calvin Verbeek and Verbeek Sand and Gravel with respect to Enforcement Order No. EO-2002-01, issued by the Director, Northern Region, Regional Services, Alberta Environment, under the *Environmental Protection and Enhancement Act* to Calvin Verbeek and 742333 Alberta Ltd., operating as Verbeek Sand and Gravel.

Cite as: *Verbeek et al.* v. *Director, Northern Region, Regional Services, Alberta Environment* (30 December 2002), Appeal No. 02-072-R (A.E.A.B.).

HEARING BEFORE: Dr. M. Anne Naeth;
Mr. Ron V. Peiluck; and
Mr. Ron Hierath.

APPEARANCES:

Appellants: Mr. Calvin Verbeek and 742333 Alberta Ltd., operating as Verbeek Sand and Gravel, represented by Mr. Mike Ryan.

Director: Mr. Al Montpellier, Director, Northern Region, Regional Services, Alberta Environment, represented by Ms. Michelle Williamson and Ms. Shannon Keehn, Alberta Justice.

Board Staff: Mr. Gilbert Van Nes, General Counsel and Settlement Officer; Ms. Valerie Higgins, Registrar of Appeals; and Ms. Debra Makaryshyn, Hearing Clerk.

EXECUTIVE SUMMARY

Alberta Environment issued an Enforcement Order to Mr. Calvin Verbeek and 742333 Alberta Ltd., operating as Verbeek Sand and Gravel, for a contravention of sections 60 and 61 of the *Environmental Protection and Enhancement Act.* These sections of the Act state that a person who wishes to carry out a designated activity, in this case the operation of a gravel pit, is required to obtain an approval. Mr. Verbeek and Verbeek Sand and Gravel were alleged to have operated a gravel pit without an approval at W-11-54-27-W4M, in Sturgeon County, Alberta.

The Board received a Notice of Appeal from Mr. Calvin Verbeek and Verbeek Sand and Gravel appealing the Enforcement Order. The Board held a Hearing and received arguments from Mr. Verbeek and Alberta Environment, following which the Board determined that Mr. Verbeek and Verbeek Sand and Gravel were operating a gravel pit without an approval in contravention of the Act. Therefore, the Enforcement Order was properly issued. As a result, the Board recommended to the Minister of Environment that the Enforcement Order be confirmed, subject to changes in the dates by which the Enforcement Order must be complied with.

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I. BACKGROUND

[1] On September 26, 2002, the Director, Northern Region, Regional Services, Alberta Environment (the "Director"), issued Enforcement Order No. EO-2002-01 (the "Order") under the *Environmental Protection and Enhancement Act*, R.S.A. 2002, c. E-12 (the "Act" or "EPEA"), to Mr. Calvin Verbeek and 742333 Alberta Ltd., operating as Verbeek Sand and Gravel, with respect to the operation of a sand and gravel pit (the "Pit") without an approval. The Pit is located at W-11-54-27-W4M in Sturgeon County, Alberta.

[2] The Environmental Appeal Board (the "Board") received a Notice of Appeal from Mr. Calvin Verbeek on behalf of himself and 742333 Alberta Ltd.[1] (the "Appellants") on October 2, 2002, appealing the Order.

[3] The Board acknowledged receipt of the Notice of Appeal on October 3, 2002, and asked the Parties[2] for available dates for a mediation meeting or hearing. The Board also requested that the Director provide a copy of his records (the "Record") related to this appeal.

[4] According to standard practice, the Board wrote to the Natural Resources Conservation Board and the Alberta Energy and Utilities Board, asking whether the matter had been the subject of a hearing or review under their respective legislation. Both boards replied in the negative.[3]

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[1] At the Hearing, Mr. Verbeek indicated that 742333 Alberta Ltd. does not have an interest in the Pit and that 742333 Alberta Ltd. is now owned by his son. The Board notes that a corporate search conducted by the Director indicates that 742333 Alberta Ltd. is the declarant of the trade name "Verbeek Sand and Gravel" and that Mr. Calvin Verbeek is a Director of 742333 Alberta Ltd. (See: Director's Record, Tabs 6 and 7.) The Board also notes that Mr. Calvin Verbeek, in filing an appeal on behalf of Verbeek Sand and Gravel, is purporting to act on behalf of 742333 Alberta Ltd. Also, there was no indication in the Notice of Appeal that one of the grounds of appeal was that Verbeek Sand and Gravel had been improperly named in the Order on the basis that it was not owned by Mr. Calvin Verbeek. Therefore, the Board is of the view that it was appropriate, with respect to whom the proper parties are, for the Director to issue the Order against both Mr. Calvin Verbeek and 742333 Alberta Ltd. Further, as the Notice of Appeal was filed on behalf of both Mr. Verbeek and Verbeek Sand and Gravel, 742333 Alberta Ltd. is a proper appellant along with Mr. Calvin Verbeek.

[2] The "Parties" to this appeal are the Director and Mr. Calvin Verbeek, acting on behalf of himself and on behalf of 742333 Alberta Ltd., operating as Verbeek Sand and Gravel.

[3] See: Letter from the Natural Resources and Conservation Board, dated October 4, 2002, and Letter from the Alberta Energy and Utilities Board, dated October 7, 2002.

[5] The Director provided a copy of the Record on October 17, 2002, and the Board forwarded a copy to the Appellants on October 24, 2002. The Director provided available dates for a mediation meeting or hearing and indicated that Sturgeon County might have an interest in this appeal. No response was received from Mr. Verbeek.

[6] On October 23, 2002, the Board contacted Sturgeon County, notifying it of the appeal.[4] No response was received from Sturgeon County.

[7] On October 24, 2002, the Board advised the Parties that it had decided to proceed directly to a hearing in this matter and again asked for available dates for the hearing from Mr. Verbeek. In response to this request, the Board was contacted by Mr. Mike Ryan who indicated he was acting as agent for Mr. Verbeek and requested that the Board consider mediation of this matter. On November 4, 2002, following discussions between Board Staff and the Parties, the Board confirmed its decision to proceed directly to a hearing to be held on December 3, 2002.

[8] The Board received submissions in preparation for the Hearing from the Director on November 25, 2002, and from the Appellants on November 27, 2002. In their submission, the Appellants requested that Mr. Ed Cappis, Mr. Dennis Twerdoff, and a number of other employees of Alberta Environment attend the Hearing. The Appellants also asked the Director to provide a number of maps. The Board requested that the Director provide comments in response to these requests.[5]

[9] The Director responded on November 29, 2002, stating that Mr. Ed Cappis and Mr. Dennis Twerdoff were no longer employees of Alberta Environment and were not involved in the issuance of the Order. The Director agreed to provide the maps dated 1985, 1987, and

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[4] See: Letter from the Director, dated October 17, 2002. The Board then contacted Sturgeon County again on November 14, 2002 advising of the Hearing date and stated the deadline for making application to make representations before the Board in this appeal was November 25, 2002. See: Letter from Board, dated November 14, 2002.

[5] See: Board Letter, dated November 27, 2002.

2001. The Director also agreed to bring the other employees of Alberta Environment requested by the Appellants to the Hearing for cross-examination by the Appellants.[6]

[10] In a letter received November 29, 2002, the Appellants again requested the attendance of Mr. Ed Cappis at the Hearing as the Appellants believed that he had given verbal permission to continue operation of the Pit without an approval. The Appellants also requested that the Board subpoena "…all staff of Alberta Environment that have been involved with Verbeek Sand and Gravel during the past ten (10) years…."

[11] The Board responded on November 29, 2002, that it does not automatically grant subpoenas upon request, that the specific individual being requested must be identified, and that an explanation must be given as to how the information the requested individual could provide would be both relevant and necessary to the matter before the Board. The Board gave the Appellants an additional opportunity to provide the required information about the other individuals that they would like to attend the Hearing. No further information was received. With respect to Mr. Cappis, the Board gave the Director an opportunity to respond to the Appellants request and also requested that the Director provide any information he may have on the whereabouts of Mr. Cappis.[7]

[12] On December 2, 2002, the Director provided contact information with respect to Mr. Cappis, but reiterated that Mr. Cappis was not involved with the Pit since mid 1998, and that the inspector that replaced him would be at the Hearing.[8] The Board determined that it would request that Mr. Cappis attend the Hearing. The Board contacted Mr. Ed Cappis and requested he attend the Hearing to answer questions from the Parties and the Board. Mr. Cappis agreed to provide testimony at the Hearing.

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6 See: Director's Letter, dated November 29, 2002. The Director stated that he would make Mr. Albert Poulette, Regional Compliance Manager, Northern Region, Regional Services, Alberta Environment and Ms. Michele Corry, Conservation and Reclamation Inspector, Northern Region, Regional Services, Alberta Environment available for cross-examination.

7 See: Board's Letter, dated November 29, 2002.

8 See: Director's Letter, dated December 2, 2002.

II. SUMMARY OF EVIDENCE

A. Appellants

1. Notice of Appeal

[13] In the Notice of Appeal filed on October 2, 2002, the Appellants objected to the paragraph in the Order requiring the Appellants to cease operation of the Pit. They argued that the material being removed from the site was stockpiled before 1997 and was, therefore, not subject to the conditions of the Order.[9] The Appellants further stated that by preventing the material from being removed from the site, they are precluded from collecting the proceeds that could be used to fund reclamation of the Pit. The Appellants also stated that they "may" have concerns regarding the "…nature, extent, and procedure of the reclamation…."[10]

[14] The Appellants requested the Board amend the Order to allow them to remove and sell the material in the stockpiles and to have a portion of the net proceeds applied to the reclamation of the Pit. They also requested the Board amend the procedures and steps required to reclaim the lands.[11]

2. Written Submission

[15] In their written submission, the Appellants listed a number of issues and concerns they had regarding the issuing of the Order. They argued that since the Pit was in operation prior to 1978, it should be "grandfathered" in a manner similar to other pits in the area and regulated to a different standard than what is expected of the Appellants by the Director under the Order.

[16] The Appellants further argued that there was a verbal agreement with Alberta Environment that they could continue operating the Pit as long as gravel was available and being extracted. They stated that a precedent had been set by the actions of previous employees of Alberta Environment in providing "knowledgeable support" to the Appellants. The Appellants indicated that employees of Alberta Environment assisted them in completing an application in

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9 See: Notice of Appeal, dated October 2, 2002.

10 Notice of Appeal, dated October 2, 2002.

1992, and in developing a reclamation plan in 1997. They stated that the 1997 reclamation plan is now not acceptable to the Director, and that they had to hire someone to conduct surveys and prepare another plan.

[17] The Appellants submitted that Sturgeon County and the Director have misrepresented facts to prevent them from operating the Pit, and without the ability to operate the Pit, they do not have funds to reclaim the area or to file an application for an approval along with the requested fees. They further submitted that Mr. Calvin Verbeek's health contributed to the delays and the compliance issues.

[18] The Appellants submitted that the Director made a number of factual errors in the May 15, 2002 documents that supported the Order. They argued that an area already reclaimed has been included in the Order, resulting in loss of income for them and Grunts Paintball.[12]

3. Oral Submissions

[19] At the Hearing, the Appellants admitted the Pit has been in operation since 1997, continues to be in operation today without a valid approval, and therefore, they are in noncompliance of the Act. They submitted that the requirements specified in the Order are placing an undue hardship on them. They argued that by placing a cease operation provision in the Order, the Director is making it impossible for them to sell stockpiled products. This is preventing them from earning sufficient funds for the required security and from obtaining the required information for the application, including conducting surveys and hiring reclamation consultants.

[20] The Appellants argued that they were unable to complete the necessary applications due to health problems Mr. Verbeek has suffered during the past few years. They stated that Mr. Verbeek suffered financial difficulties in the past and continues to carry a high debt load.

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[11] See: Notice of Appeal, dated October 2, 2002.

[12] It is the Board's understanding that Grunts Paintball uses part of the lands owned by the Appellant, Mr. Calvin Verbeek.

[21] The Appellants believed that other gravel pit operators in the area do not have to reclaim their gravel pits to the same standard expected of the Appellants. They provided a historical overview of the area and submitted that the Pit had been in operation during the 1950s and 1960s, and this should be taken into consideration when determining the reclamation standards for the Pit. The Appellants stated that one area of the site had been reclaimed in the early 1990s, but was included in the Order as part of the Pit.

B. Mr. Ed Cappis

[22] Mr. Ed Cappis was called as an independent witness by the Board at the request of the Appellants to answer questions from the Parties and the Board. Mr. Cappis was employed with Alberta Environment as a reclamation inspector for more than 20 years, including during the time when the initial application for an approval was made by the Appellants, and had visited the Pit at the time the last approval was issued.

[23] In his testimony, Mr. Cappis indicated repeatedly that he had not been involved in this matter for some time, and has not been to the Pit in several years. Mr. Cappis testified that he verbally stated at the time that a portion of the Pit had been reclaimed to the standard of the day. When Mr. Cappis reviewed the recent photographs of the Pit, he commented on the mounds on the reclaimed area. He stated that if the area had been re-excavated and re-entered, a reclamation certificate would be required and any pit in the area would require an approval to operate, including for the area that had previously been reclaimed. When questioned by the Appellants, he could not be certain whether the area had actually been re-excavated or whether the mounds were placed on top as claimed by the Appellants. Mr. Cappis doubted that it would have been worth the Appellants' time to reopen the area to extract the small amount of gravel that might remain.

[24] The Appellants stated that the reason they had requested Mr. Cappis be called to testify at the Hearing was that, according to the Appellants, he had given verbal permission to continue operation of the Pit without an approval. This was clearly not the case as illustrated in the cross-examination of Mr. Cappis by the Director:

CAPPIS: No, I wouldn't have done that.

> WILLIAMSON: That the verbal authorization, if anything, that I believe Mr. Ryan described to you, was a confirmation from you that a small portion of the pit dealing with the paint ball area was operating in accordance with the approval that existed at that time?
>
> CAPPIS: That is what I understood Mr. Ryan's question, that at the time it was reclaimed to the standard of the day. At that time.
>
> WILLIAMSON: And there was certainly no authorization from you, verbal or otherwise in 1999, for instance, that Mr. Verbeek could operate that pit?
>
> CAPPIS: No, because I was out of the region in 1999…."[13]

C. Director

1. Written Submissions

[25] In his submission, the Director reviewed the history of the Pit. According to the Director, an approval was first issued to the Appellants in August 1987 for the operation of a sand and gravel pit on 8.0 acres. The Director granted an extension of the approval with an expiry date of August 19, 1997, and at that time the approval dealt with 33 acres of land.

[26] The Director stated that in January and April 1997, the Appellants were notified that, pursuant to the terms of the approval, a written request was required to extend the expiry date of the approval, and a new approval must be obtained to continue operating past August 17, 1997. The Appellants were also told that operating without a valid approval was a contravention under the Act.

[27] The Appellants submitted an application to the Director to renew the approval on or about August 7, 1997. An extension of the expiry date to December 31, 1997, was granted to the Appellants to allow the Director to review the application. The application was incomplete, and the Appellants were requested to provide a conservation and reclamation plan and a security estimate. According to the Director, the Appellants did not provide the additional information, and no approval has been issued to the Appellants since the approval expired on December 31, 1997.

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[13] Hearing Tape, December 3, 2002.

[28] In March 1999, Alberta Environment contacted the Appellants and advised them that the 1997 application was deficient and there had been changes in the requirements to obtain an approval. They were advised to hire a consultant to draft plans and to assist in the completion of the application for an approval.

[29] On August 1999, Alberta Environment received a public complaint that material was being removed from the Pit. An inspection was done in September 1999, and the Appellants were verbally advised that the 1997 approval had expired and a new approval was required for the continued operation of the Pit. The Appellants were further advised to cease operating until an approval was obtained.

[30] Additional inspections were conducted on May 16, 17, and 24, June 27 and 29, and July 14, 2000, and again on May 15, 2001.[14] During these inspections, it was observed that gravel was being removed from the stockpiles and taken off the property, the loaders and scales were in operation, and the total disturbed area was approximately 76 acres. In May 2001, the Appellants admitted that gravel was being removed from the site.

[31] In December 2001, the Appellants were again advised that an approval was required under the Act and that the operation of the Pit was to cease until an approval was obtained. The Appellants claimed they had a current approval. However, after reviewing Alberta Environment records, the Director notified the Appellants in writing, that no current approval exists for the Pit, that an approval was required before any further operations occur, that it was a contravention to operate without an approval, and that the Appellants were to contact the Director to discuss the required approval.

[32] In May 2002, the Director's staff inspected the Pit to assess reclamation deficiencies. During this inspection, gravel truck drivers were noted to be submitting weigh scale slips. The Appellants were again verbally advised that an approval was required and operations were to cease until a valid approval was in place.

[33] The Director provided a report to the Appellants in June 2002, summarizing the findings of its inspections. The report stated the following deficiencies were observed:

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[14] In oral testimony, the Director stated that an inspection was not done on June 29, 2000, but another

"a) topsoil and subsoil is improperly salvaged as both have been taken as one lift, rather than salvaged separately;

b) improper and inadequate water management and erosion control of land adjacent to water bodies on the Property;

c) failure to control noxious weeds appropriately;[15]

d) pit faces are improperly sloped; and

e) setbacks from property boundaries/buffer zones are inadequate."[16]

[34] The Appellants were asked to submit their application for an approval by July 1, 2002. When no application was received, in August 2002, the Director asked the Appellants to provide information on the status of the application. The Director issued the Order on September 26, 2002 and served on the Appellants.

[35] The Director argued that the Notice of Appeal states the Appellants object to the Order requiring them to cease operations. Although it also states that the Appellants may have concerns regarding the reclamation requirements, no particulars have been provided. The Director further submitted that the Appellants have not expressed any intention to appeal any other part of the Order except the paragraph requiring them to cease operations.[17] The Director submitted that operation of the Pit has continued since the Order was issued.

[36] The Director submitted the Order was issued to "…bring the Appellant's activities back into compliance with the Act and is not intended to be punitive in nature."[18] The Director argued that the Appellants contravened, and continue to contravene, the Act, and that the Order was validly issued.

[37] The Director argued that the definition of "pit" under the *Activities Designation Regulation*, Alta. Reg. 211/1996 (the "Regulation"), includes the stockpiles and other associated infrastructure. Therefore, any use of the infrastructure or removal of the stockpile is considered "operation of the pit" and requires an approval.

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inspection was done on September 23, 2002.

15 During oral testimony, the Director stated that the failure to control noxious weeds should not be included as an issue in the report.

16 Director's Submission, dated November 25, 2002, at paragraph 29.

17 See: Director's Submission, dated November 25, 2002.

18 Director's Submission, dated November 25, 2002, at paragraph 43.

[38] The Director further submitted that the Board and the Minister do not have the jurisdiction to vary the Order, and varying the Order to "…permit the Appellant[s] to remove and sell the stockpiled soil, gravel, sand or other material would be tantamount to allowing the Appellant[s] to operate the pit without the required approval and, by corollary, rescinding the Order and overriding [sections] 60 and 61 of the Act."[19]

2. Oral Submissions

[39] The Director explained the process taken prior to the issuance of the Order and the purpose of the Order. He reiterated that the Order is not intended to be punitive, but to set timelines in which the Appellants are to comply with the Act.

[40] The Director also explained how the acres in the Order were calculated. According to the Director, the pit area was walked and global positioning systems were used to calculate distance and area. The Director confirmed that the area identified by the Appellants as being reclaimed had been included in the calculations, as it appeared to have been disturbed. The estimated size of the area in dispute was approximately 20 acres. However, even if this area was excluded, an approval was still required for the Pit. The legislation states that an approval is required for the operation of any sand and gravel pit over twelve and a half acres. Even if the Appellants' argument that this area had been reclaimed is accepted, this means the Pit is still over 50 acres and, therefore, the Appellants still needed a valid approval.

III. DISCUSSION

A. Legislation

[41] The authority for the Director to issue an Enforcement Order is given in section 210 of the Act which provides:

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[19] Director's Submission, dated November 25, 2002, at paragraph 57.

> "(1) Where in the Director's opinion a person has contravened this Act, except sections 178, 179, 180, 181 or 182, the Director may, whether or not the person has been charged or convicted in respect of the contravention, issue an enforcement order ordering any of the following:
>
> (a) the suspension or cancellation of an approval, registration or certificate of qualification;
>
> (b) the stopping or shutting down of any activity or thing either permanently or for a specified period;
>
> (c) the ceasing of the construction or operation of any activity or thing until the Director is satisfied the activity or thing will be constructed or operated in accordance with this Act;
>
> (d) the doing or refraining from doing of any thing referred to in section 113, 129, 140, 150, 156, 183 or 241, as the case may be, in the same manner as if the matter were the subject of an environmental protection order;
>
> (e) specifying the measures that must be taken in order to effect compliance with this Act.
>
> (2) Where an enforcement order specifies measures that must be taken under subsection (1)(e), the measures may impose requirements that are more stringent than applicable requirements in the regulations.
>
> (3) An enforcement order issued under subsection (1) shall contain the reasons for making it and must be served on the person to whom it is directed."

[42] Sections 60 and 61 of the Act state:

> "60 No person shall knowingly commence or continue any activity that is designated by the regulations as requiring an approval or registration unless that person holds the required approval or registration.
>
> 61 No person shall knowingly commence or continue any activity that is designated by the regulations as requiring an approval or registration unless that person holds the required approval or registration."

[43] An activity is defined in section 1(a) of the Act as "…an activity or part of an activity listed in the Schedule of Activities." Section 5(b) of the Schedule of Activities includes the "…construction, operation or reclamation of a mine, quarry or pit…" as an activity. A pit is defined in section 1(xx) of the Act as:

> "…an excavation in the surface made for the purpose of removing, opening up or proving sand, gravel, clay, marl, peat or any other substance, and includes any associated infrastructure, but does not include a mine or quarry."

[44] Section 3(i) of the Regulation, further defines a pit as:

> "…an opening or excavation in or working of the surface or subsurface in a parcel for the purpose of working, recovering, opening up or proving any sand, gravel, clay, marl or other substance, and any associated infrastructure connected with the pit, including stockpiles, but does not include
>
> (i) a mine, quarry or borrow excavation,
>
> (j) a pit, or where there is more than one pit in the parcel, those pits, where the area of the pit or the aggregate area of the pits, as the case may be, is less than 5 hectares (12.5 acres), or
>
> (k) a pit on public land."

Infrastructure is defined in section 3(d) of the Regulation as:

> "…any works, buildings, structures, facilities, equipment, apparatus, mechanism, instrument or machinery belonging to or used in connection with a mine, oil production site, pipeline, quarry, pit, borrow excavation, peat operation, coal processing plant or transmission line, and includes any storage site or facility, disposal site or facility, access road, haul road, railway or telecommunication line."

The Regulation goes on to designate the opening up, operation, or reclamation of a pit as requiring an approval.

B. Application

[45] The purpose of the Act is stated in section 2.[20] Of particular relevance to this appeal are sections 2(a), (b), (c), (d), and (f) which provide:

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[20] Section 2 of EPEA provides:

> "The purpose of this Act is to support and promote the protection, enhancement and wise use of the environment while recognizing the following:
>
> (a) the protection of the environment is essential to the integrity of ecosystems and human health and to the well-being of society;
>
> (b) the need for Alberta's economic growth and prosperity in an environmentally responsible manner and the need to integrate environmental protection and economic decisions in the earliest stages of planning;
>
> (c) the principle of sustainable development, which ensures that the use of resources and the environment today does not impair prospects for their use by future

"The purpose of this Act is to support and promote the protection, enhancement and wise use of the environment while recognizing the following:

(a) the protection of the environment is essential to the integrity of ecosystems and human health and to the well-being of society;
(b) the need for Alberta's economic growth and prosperity in an environmentally responsible manner and the need to integrate environmental protection and economic decisions in the earliest stages of planning;
(c) the principle of sustainable development, which ensures that the use of resources and the environment today does not impair prospects for their use by future generations;
(d) the importance of preventing and mitigating the environmental impact of development and of government policies, programs and decisions;…
(f) the shared responsibility of all Alberta citizens for ensuring the protection, enhancement and wise use of the environment through individual actions;…"

[46] One of the purposes of the Act is to ensure the wise use of the environment and the mitigating of environmental impacts. The requirement to obtain an approval is the cornerstone of achieving this goal. The approval is issued to ensure what can be done is being done to protect the environment, and if anyone is in contravention of the approval, steps can be taken to ensure compliance. Without this process, the purpose of the Act could not be achieved.

[47] The Pit the Appellants operate falls within the definition of an activity requiring an approval. The site is at least 33 acres, possibly closer to 55 acres, and potentially 76 acres in

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generations;
(d) the importance of preventing and mitigating the environmental impact of development and of government policies, programs and decisions;
(e) the need for Government leadership in areas of environmental research, technology and protection standards;
(f) the shared responsibility of all Alberta citizens for ensuring the protection, enhancement and wise use of the environment through individual actions;
(g) the opportunities made available through this Act for citizens to provide advice on decisions affecting the environment;
(h) the responsibility to work co-operatively with governments of other jurisdictions to prevent and minimize transboundary environmental impacts;
(i) the responsibility of polluters to pay for the costs of their actions;
(j) the important role of comprehensive and responsive action in administering this Act."

size. An approval would not be required only if the Pit was less than 12.5 acres. The Appellants admitted they needed an approval, they did not have an approval, and they were operating in contravention of the Act. The law requires an approval. The Appellants were not complying with the Act, and the Director was therefore entitled to issue the Order. The Appellants did not present any evidence to show that the Director issued the Order improperly or that the terms of the Order were invalid. Although the Appellants argued that the Order should not have been issued, they did not provide the Board with any legal reason to withdraw the Order.

[48] The Board believes the Appellants are fully aware of the importance of protecting the environment, as it was stated during the Hearing that Mr. Verbeek is involved in a conservation organization in the community. The Board also believes the Appellants do not intend to harm the environment. However, the Act requires the operator of designated activities to obtain an approval. However, the requirement to obtain an approval for designated activities is the cornerstone of the regulatory scheme established under EPEA. The requirement to obtain an approval must be complied with.

[49] The Board acknowledges the attempts of the Director to assist the Appellants to come into compliance with the Act. The Director did not issue the Order the day he found the Appellants in noncompliance. According to testimony and the submissions of the Director, as well as documentation in the Record, the Appellants were notified on numerous occasions that they required an approval to continue operating. The Act is very clear. Certain activities require an approval, and the operating of a sand and gravel pit is specifically listed as an activity requiring an approval.

[50] Although the Board appreciates the concerns of the Appellants, there is little that it can do to assist them. During testimony, the Appellants admitted they have continued to operate the Pit even though they were aware they required an approval and they did not hold a valid approval.

[51] The Board sympathizes with Mr. Verkeek as it is clear that he has had a number of problems during the past few years. Mr. Verbeek has faced both health and financial problems, as well as difficulties operating the farm and gravel pit. The Board realizes that complying with the Order will have significant financial implications on him. However, the law

is the law, and the Board is required to uphold it as it was enacted by the Legislature. Although the Appellants argued that the law should be more flexible, it is not in the Board's jurisdiction to change the law.

[52] The Director stated that the Order was issued to get the Appellants to comply with the Act, not to be punitive. Had the Appellants made some effort to comply with the requests of the Director, it appears the issuing of the Order may have been avoided. The Director stated that the purpose of issuing the Order was to establish a timeline and structure for bringing the Pit into compliance. The Board agrees and is of the view that the Order was appropriate in these circumstances. The Director had been trying since 1998 to have the Appellants complete and submit the application. The Director testified that if he had some documentation of a proposed reclamation plan, his staff would have been available to review the plan and ensure it would meet the requirements of a completed application under the Act. However, without the initial step taken by the Appellants, the options available to the Director were limited.

[53] The Appellants are essentially in the same position after the Order was issued as they were prior to its issuance. The only difference is that the Order provides a plan, including a structure and a timeline, for the Appellants to come into compliance with the Act.

[54] The Appellants expressed concerns regarding the complexity of the application compared to previous applications filed by them. The Appellants must realize the legislation has changed since 1992 when they filed the last application, and the application process has changed with the legislation.[21] The fact that it may be a more onerous task now does not excuse anyone from operating without a valid approval.

[55] The Board recognizes that Mr. Verbeek has health problems that may limit his ability to complete the forms on his own, but as the Director stated, the Appellants could have had a third party complete the application forms. In fact, one of the Appellants' own witnesses testified that he had completed the forms as much as he could and had recommended the Appellants hire someone to complete the remaining portions.

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[21] EPEA came into force on September 1, 1993. Prior to that date, the *Land Surface Conservation and Reclamation Act*, R.S.A. 1980, c.L-3 governed the requirements for gravel pits.

[56] In the Hearing, the Board heard the Director was willing to work with the Appellants and be flexible in his approach, but always being mindful of the constraints of the law. The Appellants need to provide the relevant information to the Director. The Board notes the Appellants have taken an important step in that they have provided the Director with additional survey information.

[57] The Appellants wanted flexibility in the Director's approach, but flexibility is needed on both sides. The Director is limited, by law, in how far he can bend. It was clear in the Director's testimony that he was more than willing to accommodate the issues raised by the Appellants as much as possible. Although the ultimate desire of the Appellants is to continue the operation of the Pit without an approval and without providing the required security deposit, these are requirements that the Director cannot change and neither can this Board.

[58] The Director demonstrated a willingness to consider various options that may be available to the Appellants. For example, if the Appellants cannot afford to obtain an approval for the entire Pit, it may be possible for them to obtain an approval for part of the Pit. Another alternative is to include the selling of the stockpiles as part of the approved reclamation plan. What is important, and which Mr. Poulette so aptly discussed, is that the Appellants need to give the Director something to work with.

[59] One matter that arose during the Hearing and was discussed by the Parties was the issue of the stockpiles. The Board is innately troubled by the arguments that a person requires an approval to sell material that is brought in from off site, but it also appreciates the practical difficulties in distinguishing between on site and off site material. The Board does, however, accept the argument that to remove the material off site, loaders, trucks, and other equipment would be needed, and equipment is included in the definition of infrastructure.[22] Under this definition, it appears the removal of the stockpiles would require an approval.

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[22] Infrastructure is defined in section 3(d) of the Regulation as:

> "…any works, buildings, structures, facilities, equipment, apparatus, mechanism, instrument or machinery belonging to or used in connection with a mine, oil production site, pipeline, quarry, pit, borrow excavation, peat operation, coal processing plant or transmission line, and includes any storage site or facility, disposal site or facility, access road, haul road, railway or telecommunication line."

[60] The Board would have liked to hear more evidence on the Appellants' plans to bring the Pit into compliance. Although broad statements were made that the Appellants did have a plan, nothing of substance was provided to the Board. This appeared to be the major stumbling block in resolving this matter. The Board is also concerned with the Appellants' conception of what is required to reclaim the area. The Director stated that reclamation requires the Pit to be reclaimed and recontoured to equivalent land capability and to reestablish the vegetation. In most circumstances, regrading with heavy equipment, although a good first step, will not restore the lands to an acceptable standard. This indicates another reason why it is important for operators of these facilities to provide the appropriate information in their applications.

[61] The Board encourages the Parties to work together to develop a solution that will ensure the legislation is complied with and that will work practically for the Appellants. In this situation, the use of conflict resolution techniques may be beneficial to the Parties to assist them in working out the details of what is required to be done. The Board appreciates the efforts of Mr. Mike Ryan and it appears his assistance has resulted in some positive progress. The Board hopes this will continue and that Mr. Ryan may be of assistance to the Appellants in dealing with the Director.

[62] Even though the Parties may be able to come to a resolution in this matter, the Board does not believe it is appropriate to lift the Order under these circumstances. The fact that the Appellants have been operating the Pit for a number of years, knowing they were not complying with the law, indicates that a firm timeline and a structure are required to ensure the Appellants do what is necessary to fall into compliance. It appears the Appellants have people who are willing to assist them in any way possible, and the Director also provided additional names for them to contact to assist in the application and reclamation process. The Board hopes the Appellants will make use of the assistance being provided to them.

[63] The Board notes that, as a result of the filing of this appeal and the time for it to be brought to a Hearing, the timelines prescribed in the Order have passed. Therefore, the Board is prepared to provide additional time for the Appellants to complete the tasks required under the Order. The Board will therefore recommend that the timelines be varied to give proper effect to

the Order and to provide sufficient time for the Appellants to prepare their plan to present to the Director. This will also provide the Director the opportunity to review the area in question and determine if a portion of the Pit was previously reclaimed and should no longer be subject to the Order.

IV. CONCLUSION AND RECOMMENDATIONS

[64] The Appellants contravened section 60 and 61 of the Act; they operated a gravel pit without the required approval. Therefore, the Order issued by the Director, the basis for which is a contravention of the Act, was properly issued. The requirement to obtain an approval for designated activities is a cornerstone of the Act, and must be properly enforced to promote the purposes of the Act. The Order was issued to provide a timeline and structure to the application process to ensure compliance with the requirements of the Act.

[65] The Board, therefore, concludes that the Director acted within his jurisdiction in issuing the Order. However, as the timelines specified in the Order have passed, the Board recommends that the dates for submitting the information and the application to the Director be varied.

[66] Pursuant to section 95 of the *Environmental Protection and Enhancement Act*, the Board recommends to the Minister of Environment that the decision of the Director, Northern Region, Regional Services, Alberta Environment to issue Enforcement Order No. EO-2002-01 to Mr. Calvin Verbeek and 742333 Alberta Ltd., operating as Verbeek Sand and Gravel, on September 26, 2002, be confirmed subject to the following changes:

1. The portion of the Order that reads

   > "2. The Parties shall, by **November 15, 2002**, submit to the Manager, for the Manager's approval, a written reclamation plan [the "Plan"] for the reclamation of the disturbed area, including the Pit [the "Reclamation Work"]."

   should be amended to read

   > "2. The Parties shall, by **March 15, 2003**, submit to the Manager, for the Manager's approval, a written reclamation plan [the "Plan"] for the reclamation of the disturbed area, including the Pit [the "Reclamation Work"]."

2. The portion of the Order that reads

> "9. The first status report shall be submitted by **October 15, 2002**. Subsequent reports shall thereafter be submitted in writing every 30th day, unless otherwise directed by the Manager in writing."

should be amended to read

> "9. The first status report shall be submitted by **February 15, 2003**. Subsequent reports shall thereafter be submitted in writing every 30th day, unless otherwise directed by the Manager in writing."

[67] Attached for the Minister's consideration is a draft Ministerial Order implementing these recommendations.

[68] Finally, with respect to section 100(2) and 103 of the Act, the Board recommends that copies of this Report and Recommendations and any decisions by the Minister be sent to the following parties:

1. Mr. Calvin Verbeek;
2. Mr. Mike Ryan, agent for Mr. Calvin Verbeek; and
3. Ms. Michelle Williamson and Ms. Shannon Keehn, Alberta Justice representing Mr. Al Montpellier, Director, Northern Region, Regional Services, Alberta Environment.

Dated on December 30, 2002, at Edmonton, Alberta.

"original signed by"
Dr. M. Anne Naeth

"original signed by"
Mr. Ron V. Peiluck

"original signed by"
Mr. Ron Hierath

V. DRAFT MINISTERIAL ORDER

Ministerial Order
/2003

Environmental Protection and Enhancement Act,
R.S.A. 2000, c. E-12

Order Respecting Environmental Appeal Board Appeal No. 02-072

I, Dr. Lorne Taylor, Minister of Environment, pursuant to section 100 of the Environmental Protection and Enhancement Act, make the order in the attached Appendix being an Order Respecting Environmental Appeal Board Appeal No. 02-072.

Dated at the City of Edmonton, in the Province of Alberta this ____ day of _____, 2003.

_____
Honourable Dr. Lorne Taylor
Minister of Environment

Draft Appendix

With respect to the decision of the Director, Northern Region, Regional Services, Alberta Environment (the "Director"), to issue Enforcement Order No. EO-2002-01 (the "Order") dated September 26, 2002 under the *Environmental Protection and Enhancement Act* to Mr. Calvin Verbeek and 742333 Alberta Ltd., operating as Verbeek Sand and Gravel, I, Dr. Lorne Taylor, Minister of Environment:

1. Order that the decision of the Director to issue the Order is confirmed, subject to the following provisions.

2. Order that the portion of the Order that reads:

   "2. The Parties shall, by **November 15, 2002**, submit to the Manager, for the Manager's approval, a written reclamation plan [the "Plan"] for the reclamation of the disturbed area, including the Pit [the "Reclamation Work"]."

   be deleted and replaced with:

   "2. The Parties shall, by **March 15, 2003**, submit to the Manager, for the Manager's approval, a written reclamation plan [the "Plan"] for the reclamation of the disturbed area, including the Pit [the "Reclamation Work"]."

3. Order that the portion of the Order that reads:

   "9. The first status report shall be submitted by **October 15, 2002**. Subsequent reports shall thereafter be submitted in writing every 30th day, unless otherwise directed by the Manager in writing."

   be deleted and replaced with:

   "9. The first status report shall be submitted by **February 15, 2003**. Subsequent reports shall thereafter be submitted in writing every 30th day, unless otherwise directed by the Manager in writing."

ALBERTA ENVIRONMENT

Office of the Minister

Ministerial Order
33/2003

Environmental Protection and Enhancement Act,
R.S.A. 2000, c. E-12

Order Respecting Environmental Appeal Board Appeal No. 02-072

I, Dr. Lorne Taylor, Minister of Environment, pursuant to section 100 of the Environmental Protection and Enhancement Act, make the order in the attached Appendix being an Order Respecting Environmental Appeal Board Appeal No. 02-072.

Dated at the City of Edmonton, in the Province of Alberta this 21st day of January, 2003.

"original signed by"
Honourable Dr. Lorne Taylor
Minister of Environment

Appendix

With respect to the decision of the Director, Northern Region, Regional Services, Alberta Environment (the "Director"), to issue Enforcement Order No. EO-2002-01 (the "Order") dated September 26, 2002 under the *Environmental Protection and Enhancement Act* to Mr. Calvin Verbeek and 742333 Alberta Ltd., operating as Verbeek Sand and Gravel, I, Dr. Lorne Taylor, Minister of Environment:

1. Order that the decision of the Director to issue the Order is confirmed, subject to the following provisions.

2. Order that the portion of the Order that reads:

   "2. The Parties shall, by **November 15, 2002**, submit to the Manager, for the Manager's approval, a written reclamation plan [the "Plan"] for the reclamation of the disturbed area, including the Pit [the "Reclamation Work"]."

   be deleted and replaced with:

   "2. The Parties shall, by **March 15, 2003**, submit to the Manager, for the Manager's approval, a written reclamation plan [the "Plan"] for the reclamation of the disturbed area, including the Pit [the "Reclamation Work"]."

3. Order that the portion of the Order that reads:

   "9. The first status report shall be submitted by **October 15, 2002**. Subsequent reports shall thereafter be submitted in writing every 30th day, unless otherwise directed by the Manager in writing."

   be deleted and replaced with:

   "9. The first status report shall be submitted by **February 15, 2003**. Subsequent reports shall thereafter be submitted in writing every 30th day, unless otherwise directed by the Manager in writing."