
**ALBERTA
ENVIRONMENTAL APPEALS BOARD**

Report and Recommendations

Date of Report and Recommendations – September 20, 2021

IN THE MATTER OF sections 91, 92, 94, 95, and 99 of the
Environmental Protection and Enhancement Act, R.S.A. 2000, c. E-12;

-and-

IN THE MATTER OF an appeal filed by Harbour Environmental Group Ltd., with respect to the decision of the Director, South Region, Regulatory Assurance Division, Alberta Environment and Parks, to issue Amending Approval No. 391593-00-01 under the *Environmental Protection and Enhancement Act* to Harbour Environmental Group Ltd.

Cite as: *Harbour Environmental Group Ltd. v. Director, South Region, Regulatory Assurance Division, Alberta Environment and Parks* (20 September 2021), Appeal No. 20-019-R (A.E.A.B.), 2021 ABEAB 22.

BEFORE:

Meg Barker, Acting Chair and Board Member.

PARTIES:

Appellant:

Harbour Environmental Group Ltd.,
represented by Sean Yaehne and Joseph
Sullivan.

Director:

Andun Jevne, Director, South Region,
Regulatory Assurance Division, Alberta
Environment and Parks.

EXECUTIVE SUMMARY

Harbour Environmental Group Ltd. received an Amending Approval from Alberta Environment and Parks (AEP) for the operation and reclamation of the Calgary Waste Management Facility.

Harbour Environmental Group filed a Notice of Appeal with the Environmental Appeals Board (the Board), appealing several of the conditions in the Approval with respect to: definitions of aggregates, fines, hydrovac liquids, and hydrovac solids; limitation of third party distribution of hydrovac solids; hydrovac solids reuse acknowledgement form; annual hydrovac management report; and hydrovac solids for reuse.

AEP and Harbour requested the Board hold the appeal in abeyance while they discussed the resolution of the appeal. The Board agreed and requested the parties provide regular updates on their discussions.

The parties reached an agreement and requested the Board provide a Report and Recommendations to the Minister, recommending amendments to the Approval. The Board accepted the parties' agreement and recommended the Minister vary the Amending Approval.

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I. INTRODUCTION

[1] This is the Report and Recommendations of the Environmental Appeals Board (the “Board”) to the Minister of Environment and Parks (the “Minister”), regarding the resolution of the appeal filed by Harbour Environmental Group Ltd. (the “Appellant”).

II. BACKGROUND

[2] The Appellant operates the Calgary Waste Management Facility authorized by Amending Approval No. 391593-00-01 (“Amending Approval”), issued on July 1, 2020 under the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12 (“EPEA”), by the Director, South Region, Regulatory Assurance Division, Alberta Environment and Parks (the “Director”).

[3] On August 27, 2020, the Appellant filed a Notice of Appeal with the Board appealing several of the conditions in the Amending Approval: definitions of aggregates, fines, hydrovac liquids, and hydrovac solids; limitation of third party distribution of hydrovac solids; hydrovac solids reuse acknowledgement form; annual hydrovac management report; and hydrovac solids for reuse.

[4] The Board acknowledged receipt of the Notice of Appeal on August 31, 2020, and requested the Director provide the records (all documents and all electronic media) (the “Director’s Record”) he reviewed and that were available to him when making his decision to issue the Approval, including policy documents.

[5] The Board received letters from the Appellant on September 4, 2020, and the Director on September 8, 2020, requesting the appeal be held in abeyance while the Appellant and the Director (collectively the “Parties”) collaborated on the resolution of the appeal. The Director also advised that the Director’s Record would be provided while the Parties were in discussions. The Board advised the Parties on September 9, 2020, the appeal would be placed in abeyance and regular updates on their discussions were to be provided.

[6] On August 27, 2021, the Parties advised the Board they had reached an agreement and requested the Board provide the Minister with a Report and Recommendations recommending the Amending Approval be amended in accordance with the Parties’ agreement.

III. DISCUSSION

[7] The Board reviewed the agreement reached by the Parties and agreed it was reasonable. Appendix A of this Report provides a comparison of the conditions in the Amending Approval and the modified conditions that were agreed to by the Parties.

IV. RECOMMENDATIONS

[8] In accordance with section 99 of EPEA,¹ the Board recommends the Minister of Environment and Parks order Amending Approval No. 391593-00-01 be varied in accordance with the agreement reached by the Parties.

[9] Under section 100(2) of EPEA,² copies of this Report and Recommendations and any decision by the Minister are to be provided to:

1. Mr. Sean Yaehne, Harbour Environmental Group Ltd.; and
2. Mr. Andun Jevne, Director, South Region, Regulatory Assurance Division, Alberta Environment and Parks.

Dated on September 20, 2021, at Edmonton, Alberta.

“original signed by”

Meg Barker
Acting Chair and Board Member

¹ Section 99 of EPEA provides:

“In the case of a notice of appeal referred to in section 91(1)(a) to (m) of this Act or in section 115(1)(a) to (i), (k), (m) to (p) and (r) of the *Water Act*, the Board shall within 30 days after the completion of the hearing of the appeal submit a report to the Minister, including its recommendations and the representations or a summary of the representations that were made to it.”

² Section 100(2) of EPEA states:

“The Minister shall immediately give notice of any decision made under this section to the Board and the Board shall, immediately on receipt of notice of the decision, give notice of the decision to all persons who submitted notices of appeal or made representations or written submissions to the Board and to all other persons who the Board considers should receive notice of the decision.”

Appendix A – Comparison of Conditions for Amending Approval No. 391593-00-01

Clause	Existing Wording	Agreed to Wording
1.1.2(cc)	“aggregates” means washed rock that is separated from the hydrovac waste that is greater than or equal to 9.53 mm (3/8 inch) and does not contain visible fines;	"aggregates" means washed rock that is separated from the hydrovac waste that: (i) does not pass through a 9.5 mm (3/8 inch) sieve and does not contain visible fines, or (ii) meets all of the following: (A) does not pass through a 2.0 mm sieve, (B) contains no fines or negligible amounts of fines, (C) does not contain clods, and (D) the less than 2.0 mm fraction, that is segregated from the greater than 2.0 mm fraction, meets the limits for General Reuse in TABLE 4.3-A unless otherwise authorized in writing by the Director;
1.1.2(ff)	“fines” means hydrovac solids that are less than 9.53 mm (3/8 inch) in diameter;	"fines" means hydrovac solids that: (i) can pass through a 2.0 mm sieve, and (ii) are not aggregates as per 1.1.2(cc)(ii) unless otherwise authorized in writing by the Director;
1.1.2(gg)	“hydrovac liquids” means the liquids that are separated from the hydrovac waste;	"hydrovac liquids" means the filtered liquids that are separated from the hydrovac waste;
Table 4.2-A	Table headings “Minimum List of Parameters” and “Minimum Frequency” pH, EC, CI, TDS and Hardness Metals (listed in Table 2 of Alberta Tier 1 Guidelines) Polycyclic Aromatic Hydrocarbons as B(a)P TPE and IACR	Table headings “Parameters” and “Frequency” pH, EC, CI and Hardness Metals (listed in Table 2 of Alberta Tier 1 Guidelines) except hexavalent chromium Polycyclic Aromatic Hydrocarbons (PAHs), as B(a)P TPE
4.3.21	In addition to the parameters in TABLE 4.3-A, the approval holder shall identify and monitor hydrovac solids intended for reuse for parameters that meet all three (3) of the following: (a) are not specified in TABLE 4.3-A; (b) are listed in Alberta Tier 1 Guidelines; and (c) are reasonably suspected to potentially exceed the Alberta Tier 1 Guidelines for an	The approval holder shall identify and monitor hydrovac solids intended for reuse for parameters that may exceed the Alberta Tier 1 guidelines for an agricultural or residential land use.

Clause	Existing Wording	Agreed to Wording
	agricultural or residential land use.	
4.3.22	Pursuant to 4.3.21, the approval holder shall dispose of hydrovac solids that exceed any parameter that: (a) is not specified in TABLE 4.3-A listed; and (b) exceeds the Alberta Tier 1 Guidelines for residential or agricultural land use.	none
Table 4.3-A	<p>Limits – For General Reuse</p> <p>Limits – For Specified Reuse Pursuant to 4.3.18</p> <p>Parameter – Metals</p> <p>Parameter – none</p> <p>Limits – For General Reuse</p> <p>In accordance with the most conservative guideline for soil in Table 1 of Alberta Tier 1 Guidelines for residential/parkland or agricultural use.</p> <p>Compare the guidelines for coarse and fine material and apply the most conservative guideline of the two.</p>	<p>Limits – For General Reuse Pursuant to 4.3.17</p> <p>Limits – For Specified Reuse Pursuant to 4.3.17 and 4.3.18</p> <p>Parameter – Metals, excluding hexavalent chromium</p> <p>Parameter – Other parameters that are reasonably suspected to potentially exceed the Alberta Tier 1 Guidelines for an agricultural or residential land use.</p> <p>Limits – For General Reuse Pursuant to 4.3.17</p> <p>In accordance with Table 1 of Alberta Tier 1 Guidelines for soil, use: 1. for land use, the most conservative guideline of residential/parkland and agricultural use; and 2. for soil type, the guideline as determined in 4.3.23.1</p>
4.3.23.1	none	For the purposes of TABLE 4.3-A, the approval holder shall: (a) compare the Alberta Tier 1 Guideline provided for coarse and fine soils and use the more conservative of the two; or (b) use the Alberta Tier 1 Guideline for soil particle size: (i) as determined by an Assessment of Texture Report completed for the receiving site in accordance with 4.3.23.2, and (ii) only when authorized in writing by the Director.
4.3.23.2	none	The approval holder shall include, at a minimum, all of the following in the Assessment of Texture Report: (a) a determination of the soil type on the

Clause	Existing Wording	Agreed to Wording
		<p>receiving site, based on:</p> <ul style="list-style-type: none"> (i) an assessment of the physical conditions completed in accordance with section 5.1.3 of Alberta Tier 1 Guidelines, and (ii) the results of the sieve method used in the assessment referred to in (i); (b) a review of current and historical activities at the receiving site; (c) a scaled site plan that identifies all of the following: <ul style="list-style-type: none"> (i) the locations and depths where samples for texture were taken, (ii) key site features, and (iii) the locations on the site for the proposed reuse of the hydrovac solids; (d) a description of the depths and locations proposed for reuse of hydrovac solids; (e) a sufficient number and distribution of monitoring locations and depths to adequately represent both the texture of the material on the receiving site, and the proposed placement and depth of hydrovac solids; (f) for the texture analyses: <ul style="list-style-type: none"> (i) a table of monitoring results, and (ii) the laboratory reports; (g) an interpretation and discussion of the results that recommends whether the soil type of the receiving site be classified as fine or coarse; (h) any other relevant environmental information; (i) the name and relevant qualifications of the qualified environmental professional who conducted the assessment; and (j) any other information required by the Director.
4.3.23.3	none	<p>If the Assessment of Texture Report is found deficient by the Director, the approval holder shall correct all deficiencies identified in writing by the Director.</p>
4.3.27	<p>The approval holder shall ensure that the laboratory procedures for the monitoring of all inorganic parameters conform to the following:</p> <ul style="list-style-type: none"> (a) by analyzing only solid material that passes through a 2 mm sieve; (b) by determining concentrations of substances based only on the weight of the 	<p>Unless otherwise authorized in writing by the Director, the approval holder shall ensure that the laboratory procedures for the monitoring of all inorganic parameters conform to the following:</p> <ul style="list-style-type: none"> (a) by analyzing only solid material that passes through a 2 mm sieve; and (b) by determining concentrations of

Clause	Existing Wording	Agreed to Wording
	air dried solids that pass through a 2 mm sieve; and (c) for coarser fractions separated from hydrovac solids that do not have sufficient fines for an adequate sample size for the lab to analyze by material passing a 2 mm sieve, the sieve sizes in (a) and (b) can be gradually increased until a big enough sample is obtained.	substances based only on the weight of the air dried solids that pass through a 2 mm sieve.
4.3.27.1	none	The approval holder shall monitor and store hydrovac solids being assessed to meet the definition of aggregates in Section 1.1.2(cc)(ii) as follows: (a) by monitoring the corresponding hydrovac solids that are less than 2 mm in diameter; and (b) by storing the hydrovac solids at the facility until the monitoring results are known.
4.3.30	Prior to removing hydrovac solids intended to be reused from the facility, the approval holder shall obtain a Hydrovac Solids Reuse Acknowledgement Form signed by the legal owner of the land where the hydrovac solids will be reused.	Prior to removing hydrovac solids intended to be reused from the facility, the approval holder shall obtain a Reuse Acknowledgement Form signed by the legal owner of the land where the hydrovac solids will be reused, unless otherwise authorized in writing by the Director.
4.3.31	For 4.3.30, the approval holder shall provide the most current version of the Hydrovac Solids Reuse Acknowledgement Form published by Alberta Environment and Parks to the owner of any location intended to receive hydrovac solids for reuse.	Notwithstanding 4.3.30, the approval holder is exempt from the requirement to use a Reuse Acknowledgement Form where the reuse of hydrovac solids is cumulatively, less than or equal to three (3) cubic metres on one (1) parcel of land.
4.3.32	The approval holder shall retain a copy of each signed Hydrovac Solids Reuse Acknowledgement Form in 4.3.30 for a period of ten (10) years.	The approval holder shall use the most current version of the Reuse Acknowledgement Form published by Alberta Environment and Parks.
4.3.32.1	none	The approval holder shall retain a copy of each signed Reuse Acknowledgement Form obtained under 4.3.30 for a period of ten (10) years.
4.3.32.2	None	The approval holder shall make available to an Inspector or Director the completed acknowledgement forms in 4.3.30 upon request.

Clause	Existing Wording	Agreed to Wording
4.3.34(f.1)	None	procedures pertaining to implementation of 4.3.27.1, including procedures for segregation, storage, monitoring, record keeping, reuse and disposal of hydrovac solids considered for 4.3.27.1:
4.3.34(g)	procedures as to when to test for other parameters as required by as 4.3.21;	procedures as to when to test for other parameters as required by 4.3.21;
4.3.41(n)(iv)	any acknowledgement forms in 4.3.30;	a summary of any assessments and authorizations completed in accordance with 4.3.23.1;
4.5.7	In addition to the sampling information received in 4.5.4, the approval holder shall record the following sampling information for all groundwater samples collected:	In addition to the sampling information received in 2.2.1, the approval holder shall record the following sampling information for all groundwater samples collected:



ALBERTA
ENVIRONMENT AND PARKS

*Office of the Minister
Government House Leader
MLA, Rimbey-Rocky Mountain House-Sundre*

**Ministerial Order
80/2021**

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

Order Respecting Environmental Appeals Board Appeal No. 20-019

I, Jason Nixon, Minister of Environment and Parks, pursuant to section 100 of the *Environmental Protection and Enhancement Act*, make the order in the attached Appendix, being an Order Respecting Environmental Appeals Board Appeal No. 20-019.

Dated at the City of Edmonton, in the Province of Alberta, this 5 day of Oct, 2021.



Jason Nixon
Minister

Appendix

Order Respecting Environmental Appeals Board Appeal No. 20-019

With respect to the decision of the Director, South Region, Regulatory Assurance Division, Alberta Environment and Parks (the "Director"), to issue Amending Approval No. 391593-00-01 (the "Approval") under the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12, to Harbour Environmental Group Ltd. (the "approval holder"), I, Jason Nixon, Minister of Environment and Parks, order that the Approval is amended as follows:

1. Section 1.1.2(cc) is deleted and replaced with the following:

"(cc) "aggregates" means washed rock that is separated from the hydrovac waste that:

- (i) does not pass through a 9.5 mm (3/8 inch) sieve and does not contain visible fines, or
- (ii) meets all of the following:
 - (A) does not pass through a 2.0 mm sieve,
 - (B) contains no fines or negligible amounts of fines,
 - (C) does not contain clods, and
 - (D) the less than 2.0 mm fraction, that is segregated from the greater than 2.0 mm fraction, meets the limits for General Reuse in TABLE 4.3-A

unless otherwise authorized in writing by the Director;".

2. Section 1.1.2(ff) is deleted and replaced with the following:

"(ff) "fines" means hydrovac solids that:

- (i) can pass through a 2.0 mm sieve, and
- (ii) are not aggregates as per 1.1.2(cc)(ii)

unless otherwise authorized in writing by the Director;".

3. Section 1.1.2(gg) is deleted and replaced with the following:

"(gg) "hydrovac liquids" means the filtered liquids that are separated from the hydrovac waste;".

4. TABLE 4.2-A is deleted and replaced with the following:

TABLE 4.2-A: HYDROVAC LIQUIDS MONITORING AND REPORTING

MONITORING				REPORTING
Parameters	Frequency	Sample Type	Sampling Location	Annually
pH, EC, Cl and Hardness	Quarterly	Grab	Hydrovac liquids storage tanks(s)	Annually
Metals (listed in Table 2 of Alberta Tier 1 Guidelines) except hexavalent chromium				
Naphthalene				
Polycyclic Aromatic Hydrocarbons (PAHs), as B(a)P TPE				

5. Sections 4.3.21 and 4.3.22 are deleted and replaced with the following:

“4.3.21 The approval holder shall identify and monitor hydrovac solids intended for reuse for parameters that may exceed the Alberta Tier 1 Guidelines for an agricultural or residential land use.”.

6. TABLE 4.3-A is deleted and replaced with the following:

TABLE 4.3-A: HYDROVAC SOLIDS REUSE LIMITS

PARAMETER	LIMITS	
	For General Reuse Pursuant to 4.3.17	For Specified Reuse Pursuant to 4.3.17 and 4.3.18
Electrical Conductivity ds/m	3	1. 4, or 2. Natural background of a receiving site, as determined pursuant to 4.3.19
Sodium Adsorption Ratio	4	1. 12, or 2. Natural background of a receiving site, as determined pursuant to 4.3.19
pH	In accordance with Table 1 of Alberta Tier 1 Guidelines for soil, use: 1. for land use, the most conservative guideline of residential/parkland and agricultural use; and 2. for soil type, the guideline as determined in 4.3.23.1	1. The limits for general reuse of hydrovac solids, or 2. Natural background concentrations of a receiving site, as determined pursuant to 4.3.19
Metals, excluding hexavalent chromium		
PHC F2		
PHC F3		
PHC F4		
Naphthalene		
Polycyclic Aromatic Hydrocarbons as B(a)P TPE and IACR		
Other parameters that are reasonably suspected to potentially exceed the Alberta Tier 1 Guidelines for an agricultural or residential land use.		

7. The following is added immediately after Section 4.3.23:

"4.3.23.1 For the purposes of TABLE 4.3-A, the approval holder shall:

- (a) compare the Alberta Tier 1 Guideline provided for coarse and fine soils and use the more conservative of the two; or
- (b) use the Alberta Tier 1 Guideline for soil particle size:
 - (i) as determined by an Assessment of Texture Report completed for the receiving site in accordance with 4.3.23.2, and
 - (ii) only when authorized in writing by the Director.

4.3.23.2 The approval holder shall include, at a minimum, all of the following in the Assessment of Texture Report:

- (a) a determination of the soil type on the receiving site, based on:
 - (i) an assessment of the physical conditions completed in accordance with section 5.1.3 of Alberta Tier 1 Guidelines, and
 - (ii) the results of the sieve method used in the assessment referred to in (i);
- (b) a review of current and historical activities at the receiving site;
- (c) a scaled site plan that identifies all of the following:
 - (i) the locations and depths where samples for texture were taken,
 - (ii) key site features, and
 - (iii) the locations on the site for the proposed reuse of the hydrovac solids;
- (d) a description of the depths and locations proposed for reuse of hydrovac solids;
- (e) a sufficient number and distribution of monitoring locations and depths to adequately represent both the texture of the material on the receiving site, and the proposed placement and depth of hydrovac solids;
- (f) for the texture analyses:
 - (i) a table of monitoring results, and
 - (ii) the laboratory reports;
- (g) an interpretation and discussion of the results that recommends whether the soil type of the receiving site be classified as fine or coarse;
- (h) any other relevant environmental information;

- (i) the name and relevant qualifications of the qualified environmental professional who conducted the assessment; and
- (j) any other information required by the Director.

4.3.23.3 If the Assessment of Texture Report is found deficient by the Director, the approval holder shall correct all deficiencies identified in writing by the Director.”.

8. Section 4.3.27 is deleted and replaced with the following:

“4.3.27 Unless otherwise authorized in writing by the Director, the approval holder shall ensure that the laboratory procedures for the monitoring of all inorganic parameters conform to the following:

- (a) by analyzing only solid material that passes through a 2 mm sieve; and
- (b) by determining concentrations of substances based only on the weight of the air dried solids that pass through a 2 mm sieve.

4.3.27.1 The approval holder shall monitor and store hydrovac solids being assessed to meet the definition of aggregates in Section 1.1.2(cc)(ii) as follows:

- (a) by monitoring the corresponding hydrovac solids that are less than 2 mm in diameter; and
- (b) by storing the hydrovac solids at the facility until the monitoring results are known.”

9. Sections 4.3.30 to 4.3.32 are deleted and replaced with the following:

4.3.30 Prior to removing hydrovac solids intended to be reused from the facility, the approval holder shall obtain a Reuse Acknowledgement Form signed by the legal owner of the land where the hydrovac solids will be reused, unless otherwise authorized in writing by the Director.

4.3.31 Notwithstanding 4.3.30, the approval holder is exempt from the requirement to use a Reuse Acknowledgement Form where the reuse of hydrovac solids is cumulatively, less than or equal to three (3) cubic metres on one (1) parcel of land.

4.3.32 The approval holder shall use the most current version of the Reuse Acknowledgement Form published by Alberta Environment and Parks.

4.3.32.1 The approval holder shall retain a copy of each signed Reuse Acknowledgment Form obtained under 4.3.30 for a period of ten (10) years.

4.3.32.2 The approval holder shall make available to an Inspector or Director the completed acknowledgement forms in 4.3.30 upon request.”.

10. Section 4.3.34 is amended by adding the following immediately after (f):

“(f.1) procedures pertaining to implementation of 4.3.27.1, including procedures for segregation, storage, monitoring, record keeping, reuse and disposal of hydrovac solids considered for 4.3.27.1;”.

11. Section 4.3.34 is amended by deleting subsection (g) and replacing it as follows:

"(g) procedures as to when to test for other parameters as required by 4.3.21;"

12. Section 4.3.41(n)(iv) is deleted and replaced with the following:

"(iv) a summary of any assessments and authorizations completed in accordance with 4.3.23.1;"

13. Section 4.5.7 is amended as follows by deleting the phrase:

"In addition to the sampling information recorded in 4.5.4, the approval holder shall record the following sampling information for all groundwater samples collected:"

and replacing it with the phrase

"In addition to the sampling information recorded in 2.2.1, the approval holder shall record the following sampling information for all groundwater samples collected:"